



UNIVERSITY
OF CALIFORNIA
LOS ANGELES

SCHOOL OF LAW
LIBRARY

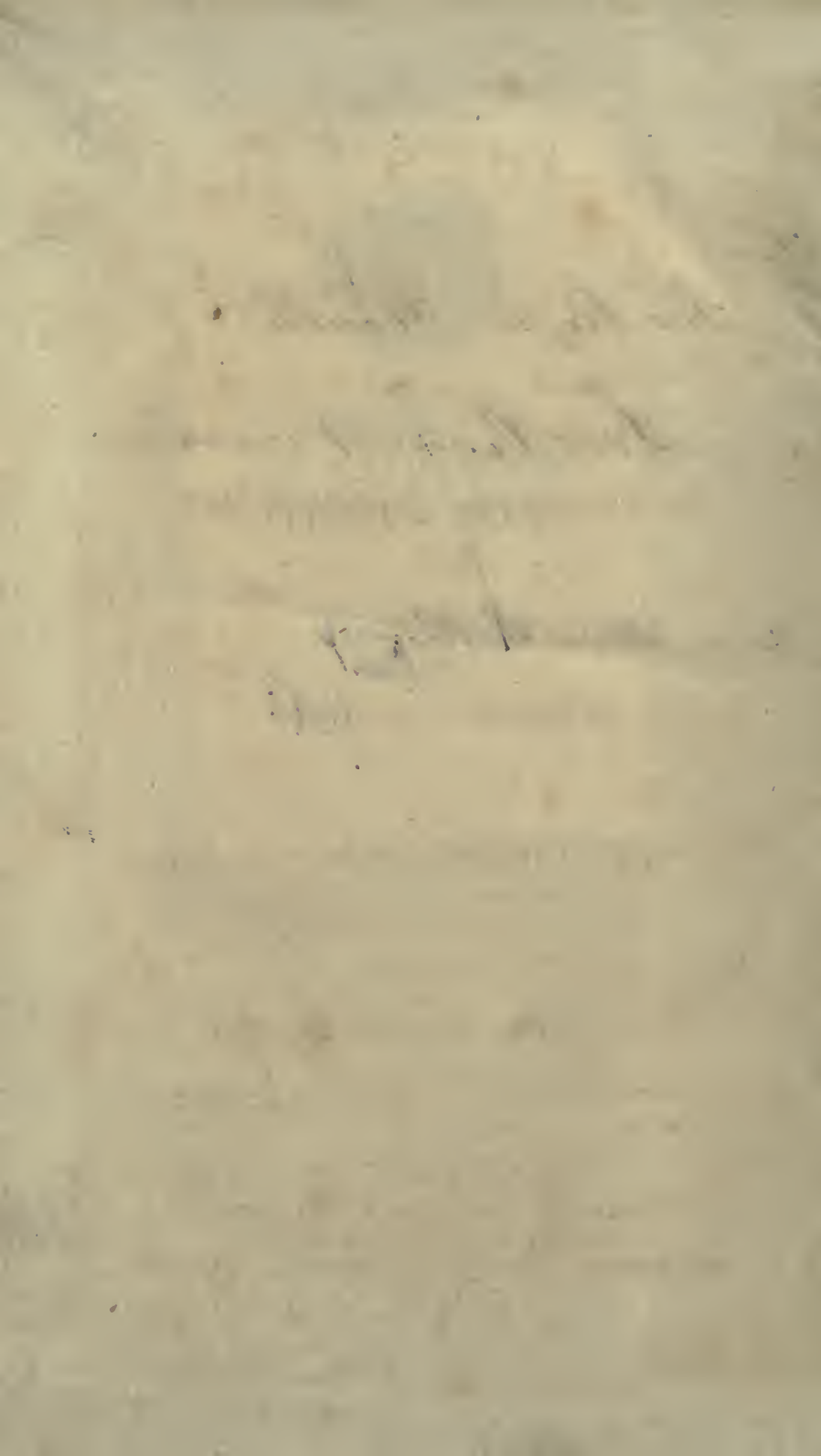
To

The Right Honble

Lord Viscount Cranborn

From the Author

Cast
p. 19



CHARGES

DELIVERED TO

GRAND JURIES IN THE ISLE OF ELY,

UPON

LIBELS, CRIMINAL LAW,

VAGRANTS, RELIGION,

Rebellious Assemblies,

&c. &c.

FOR THE USE OF MAGISTRATES

AND

STUDENTS OF THE LAW.

BY

EDWARD CHRISTIAN, ESQ. BARRISTER,

PROFESSOR OF THE LAWS OF ENGLAND AT CAMBRIDGE,

AND CHIEF JUSTICE OF THE ISLE OF ELY.

SECOND EDITION, WITH LARGE ADDITIONS.

LONDON:

PRINTED FOR T. CLARKE AND SONS,

PORTUGAL STREET, NEAR LINCOLN'S INN,

AND DEIGHTONS, NICHOLSON, AND BARRETT, CAMBRIDGE.

1819.

T
C4623 c
1819

R. WATTS, PRINTER,
Crown Court, near Temple Bar.

R3F 6 Nov 53

DEDICATED, BY PERMISSION,

TO HIS ROYAL HIGHNESS
THE PRINCE REGENT.

MAY IT PLEASE YOUR ROYAL HIGHNESS,

HAVING been employed during thirty-four years in instructing the Youth of the University of Cambridge in the Principles of the Laws and Constitution of England, and having zealously endeavoured to impress their minds with a just admiration of the blessings they are born to enjoy, and with a sincere affection and gratitude for the Liberty secured by the English Government; and having also presided twenty years in a Court of Justice, where I have never failed to instil into the minds of His Majesty's subjects a spirit of loyalty and obedience to the laws of their Country; I humbly presume to dedicate the following Charges to your ROYAL HIGHNESS.

The recollection of your ROYAL FATHER'S unalterable attachment to the Religion, Liberty, and Laws of Englishmen, never can be effaced from the hearts of his faithful subjects: and the same anxious solicitude for the unimpaired preservation of these inestimable blessings has endeared your ROYAL HIGHNESS no less to their affections; and you are peculiarly entitled to their gratitude for the approbation which you have ever graciously bestowed upon all your firm, faithful, and active Magistrates throughout the kingdom.

That you may long continue to reign in health and happiness, over a free and loyal people, is the sincere wish of,

Your ROYAL HIGHNESS'S

Most humble, most faithful,
and most obedient Subject,

ED. CHRISTIAN.

FIELD COURT, GRAY'S INN,

Dec. 10, 1819.

CONTENTS.

	Page
CHAP. I.	
CHARGE upon <i>Vagrants and Libels</i> - - -	7
CHAP. II.	
<i>Commitments for Misdemeanours further considered</i> - - - - -	32
CHAP. III.	
<i>Commitment for Libels</i> - - - - -	45
CHAP. IV.	
<i>Misdemeanours, which are not Libels or Breaches of the Peace, considered.</i> - -	87
CHAP. V.	
<i>How, and how long, Justices may bind to keep the peace, or to be of good behaviour</i> -	137
CHAP. VI.	
<i>Vagrants</i> - - - - -	143

CHAP. VII.

<i>An Abridgment of the existing Vagrant Statutes, with Observations</i>	- - - -	158
--	---------	-----

CHAP. VIII.

<i>Summary of the Practice of the Punishment of Vagrants</i>	- - - - -	187
--	-----------	-----

CHAP. IX.

<i>What Walking Passes are good, and the effect of them</i>	- - - - -	200
---	-----------	-----

CHAP. X.

<i>How Blasphemy, Sedition, and Wicked Publications, may be suppressed by the existing Law</i>	- - - - -	212
--	-----------	-----

CHAP. XI.

<i>Charge — containing Observations upon the Criminal Law</i>	- - - - -	258
---	-----------	-----

CHAP. XII.

<i>Additions to the Charge upon Criminal Law</i>	-	297
--	---	-----

CHAP. XIII.

<i>The Principles of Moral Justice explained</i>	-	316
--	---	-----

CHAP. XIV.

<i>The superior Excellence of the Moral Precepts of the Christian Religion</i>	- - - -	333
--	---------	-----

CONTENTS.

vii

CHAP. XV.

*Gaols, Trials of Prisoners at the Quarter
Sessions, Riots, and Rebellious Assemblies, 347*

CHAP. XVI.

The Law upon Riots and Rebellious Assemblies - - - - - 359

CHAP. XVII.

Riots in the Isle of Ely - - - - - 378

CHAP. XVIII.

*Charge — with Observations respecting the
Loyal Volunteers of the Isle of Ely - 388*

APPENDIX.

Forms of Precedents referred to in Chap. VIII. 397

THE HISTORY OF

THE CITY OF

THE HISTORY OF THE CITY OF BOSTON, FROM THE FIRST SETTLEMENT TO THE PRESENT TIME. BY SAMUEL JOHNSON, ESQ. OF NEW-YORK.

THE SECOND EDITION.

NEW-YORK: PRINTED AND SOLD BY SAMUEL JOHNSON, AT THE CORNER OF NASSAU AND BROAD STREETS. 1790.

THE HISTORY OF

THE CITY OF BOSTON, FROM THE FIRST SETTLEMENT TO THE PRESENT TIME. BY SAMUEL JOHNSON, ESQ. OF NEW-YORK.

THE SECOND EDITION.

NEW-YORK: PRINTED AND SOLD BY SAMUEL JOHNSON, AT THE CORNER OF NASSAU AND BROAD STREETS. 1790.

THE HISTORY OF

THE CITY OF BOSTON, FROM THE FIRST SETTLEMENT TO THE PRESENT TIME. BY SAMUEL JOHNSON, ESQ. OF NEW-YORK.

THE SECOND EDITION.

NEW-YORK: PRINTED AND SOLD BY SAMUEL JOHNSON, AT THE CORNER OF NASSAU AND BROAD STREETS. 1790.

THE HISTORY OF

THE CITY OF BOSTON, FROM THE FIRST SETTLEMENT TO THE PRESENT TIME. BY SAMUEL JOHNSON, ESQ. OF NEW-YORK.

THE SECOND EDITION.

NEW-YORK: PRINTED AND SOLD BY SAMUEL JOHNSON, AT THE CORNER OF NASSAU AND BROAD STREETS. 1790.

THE HISTORY OF

THE CITY OF BOSTON, FROM THE FIRST SETTLEMENT TO THE PRESENT TIME. BY SAMUEL JOHNSON, ESQ. OF NEW-YORK.

THE SECOND EDITION.

NEW-YORK: PRINTED AND SOLD BY SAMUEL JOHNSON, AT THE CORNER OF NASSAU AND BROAD STREETS. 1790.

PREFACE.

THE CHARGE, which is the foundation of the present publication, was delivered for the benefit of the Magistrates in the Isle of Elý, and at their request it was originally printed. The general positions advanced in it have met with the approbation of several of the most Learned Men in the Profession of the Law; and have been confirmed by every thing that I have seen or heard upon the subject, since the time it was so delivered. I am therefore encouraged to reprint it, with considerable additions; trusting that it will be found to afford some instruction to that most useful and honourable body of men throughout the kingdom, viz. Justices of the Peace.

Justices of the Peace constitute the broad basis of the pyramid of the Government of
this

this country: they are acting perpetually in their towns, villages, and neighbourhoods: by their constant co-operation and unceasing exertions, the good order and tranquillity of the country are preserved. Whatever difference of opinion may exist with respect to political questions, they all cordially join in the protection of the lives and property of his Majesty's subjects.

To Justices of the Peace in this country may justly be applied what Cicero, in his System of Government, has observed of all Magistrates or Officers of justice :

“ Magistratibus igitur opus est: sine quorum prudentia ac diligentia esse civitas non potest; quorum descriptione omnis reipublicæ moderatio continetur.

“ Nec verò solùm ut obtemperent obediuntque magistratibus, sed etiam ut eos collant diligentque præscribimus, ut Charondas in suis fecit legibus.

“ Justa imperia sunt, iisque cives modestè ac sine recusatione parento.” *Cic. de Leg. iii.*

which perhaps may be thus expressed in English :

English:—Magistrates are necessary, without whose prudence and diligence a State cannot possibly exist: the Magistracy comprises the whole government of the country.

We recommend, as Charondas did in his laws, not only that the people should render prompt obedience to the Magistrates, but also that they should cherish an affection and reverence for them. Let their orders be authorised by law, and let the subjects yield submission with modesty and without reluctance.

and the other two members of the
out of the office and assigned a clerk
to attend to the correspondence. The
other two members of the committee

It is recommended, as the members did in the
past, and that the report should be
forwarded to the committee, for
the fact that they should be
and the committee should be
be asked to be left out of the
and the committee with modesty and without
reluctance.

CHARGE

DELIVERED TO THE

GRAND JURY AT THE ASSIZES AT WISBEACH,

JULY 1817.

GENTLEMEN OF THE GRAND JURY,

I CONGRATULATE you and the Isle that we have only Five Prisoners in the Calendar; and the greater part of them would have been tried at the Sessions, if they had fallen before the Assizes. Having, from long experience, been acquainted with your knowledge of your duties as Grand Jurymen, I have no occasion to make any particular animadversion upon the crimes of which the Prisoners stand charged; as I can still, with truth and much satisfaction, declare, that in the course of the last eighteen years there has never been a single commitment by the Magistrates, a finding of the Grand Jury, or a verdict of a Petty Jury, which has not met with my perfect approbation: and I can most justly and boldly pronounce, that in the course of that period, with the exception of one assizes, fewer crimes have been committed within this Isle than in any other part of the King of England's dominions containing the same population. This
is

is owing to the active and enlightened Magistracy of the Isle, and the constant and prompt co-operation with them, upon all occasions, by men of property and education.

Though we were lately much disgraced in a remote outskirt of the Isle, yet we had then the consolation to reflect, that the heart of the Isle, and this flourishing part of it, were entirely free from all contamination: and even that was not the explosion of pre-concerted sedition or rebellion; but, deplorable as it was, it was merely the effect of a casual meeting of an idle rabble at an alehouse; and for his encouragement of it, and participation in it, the alehouse-keeper justly forfeited his life.

I had never before heard a complaint against any publican within the jurisdiction; but on the contrary, I have had occasion publicly to applaud the conduct of some, for their great propriety in bringing offenders to justice who had carried stolen property to their houses.

I need not recommend to the Magistrates, and all other Gentlemen, to pay particular attention to the public-houses, and to direct the constables to take into custody and to separate from his companions every man as soon as he is seen in a state
of

of drunkenness. This crime is very contagious, and is the parent of many others. As our public enemies are said to raise their courage by having recourse to strong spirits, so the enemies of peace and good order find themselves valiant, from intoxication, in the commission of crimes which they would have shuddered to think of if they had been sober*. I should also particularly recommend the attention of the Gentlemen of this Isle, to Provident Banks; they will soon become universal: my attention was drawn to them by accident; but from that I am perfectly convinced of their extensive salutary effects. It is very true, that the great bulk of the Poor can never derive any benefit from them, by having nothing to spare beyond their daily consumption; yet they afford to great numbers, particularly to domestic servants, an easy and certain way of rising in the ranks of society; and they certainly have a direct tendency to improve the moral habits of all the lower orders†.

There

* See my Address to the Court at the Special Assizes, in the Appendix.

† Two or three years ago, I took a morning ride to Hertford, where I was desired to assist in forming a Saving Bank. The subject was quite unknown to me at that time. There were only two then established in England; one at Bath, under the superintendence

Vagrants. There is one subject of infinite importance to the general quiet and government of this Isle, and to the kingdom at large, to which I wish to draw the attention of the Magistrates, and of all the
Gentlemen

superintendence of Dr. Heygarth ; and another at Southampton, under that of the Honourable George Rose.

The first invested the money deposited, in the Funds; and gave the depositors the dividends, with some deductions to defray the expenses: the other, four per cent. certain. We all preferred the Bath plan. I afterwards formed a plan of paying the dividends in a more simple manner than was done at Bath, which was adopted at Hertford, with some variations.

In this Bank, and in that of Bath, there was no limit to the sum deposited; and an immense sum, from labourers, servants, tradesmen, and farmers, was immediately received.

But by the statute 57 *Geo. III.* c. 130, it was proposed, that if the money was placed in the Bank of England, Government would allow 3*d.* a day for every £.100.

As the Stocks arose, this produced a much greater interest than the 3 per cents.; it therefore became necessary that the sums deposited should be limited. - At present, no one is allowed to put, in the first year, into such a bank, more than £.100; and afterwards, more than £.50 a year. This, in my opinion, is every way a national loss, and is one of the instances where the interference of the legislature, by offering a bounty, has done great harm both to the Funds and to the object they wished to promote. But it ought to be made known, which is not generally understood, that an unlimited Saving Bank may be now established anywhere; that the money may be placed in the Funds, in the names of the Trustees; and that all Letters of Attorney to

Gentlemen of the Isle. It particularly affects the honour of all the Magistrates in the kingdom, and the interests of you Gentlemen of property within this jurisdiction: it is the subject of Vagrants.

There

to purchase and transfer the stock, &c. are free from the duty on stamps. Any number of Noblemen or Gentlemen may, in any place, still establish such a bank, which, I think, is far preferable to that which has been generally adopted. See Christian's Plan for a Saving Bank, which met with the approbation of Dr. Milner (the Professor of Mathematics), Professor Vince, Dr. Wood, and several of the best Mathematicians in Cambridge.

I should recommend some of the Trustees, in every present Saving Bank, to lend their names also to an unlimited Bank, where the depositors would take the rise and fall of the Funds. It is reasonable that every one should have the choice of his Saving Bank; and those who are now excluded in a great degree, might be admitted as they were before these Banks were unfortunately changed. It would not be difficult to demonstrate the superiority of such an unlimited Bank as a national benefit; but I shall reserve the further consideration to another occasion.

The accumulation of money or notes by individuals can produce no general benefit to the country, unless it produces, at the same time, a greater quantity of food, raiment, and the means of subsistence. These Banks necessarily excite a spirit of industry and frugality. By industry, the means of subsistence are augmented; by frugality, a greater population are supported. From the general idleness and extravagance which now exist must result poverty, misery, and criminality.

There are, probably, now 50,000 of the most dangerous and profligate of His Majesty's subjects traversing the country in all directions, without any legitimate licence or control; and yet not one of them ought to move a single step, unless they were in the custody of a constable, or accompanied by a parish officer.

This is a subject that peculiarly falls under my superintendence. Twenty-five years ago, Sir Christopher Willoughby, a most active and honourable magistrate, Chairman of the Quarter Sessions for the County of Oxford, requested the attendance of two Justices of the Peace from every county in England and Wales: the greatest part of them were Members of the House of Lords, or Members of the House of Commons. I was retained, to attend them as a Legal assistant. After many discussions and various resolutions, I was directed by them to prepare a Bill, to be laid before Parliament, to prevent a great abuse of the laws respecting Vagrants, particularly by the Magistrates in London and Middlesex.

The Act of Parliament, viz. the 32d Geo. III. c. 45. was passed, drawn up by myself, under the immediate direction of that most honourable assembly. But that statute is almost entirely disregarded,
and

and the abuse now is, perhaps, a thousand times as great as it was before the passing of the Act.

At that time, as is stated in the preamble of the statute, a regular Vagrant-pass was substituted for a regular order of removal. That was a great fraud, and attended with many mischiefs; but now, what is infinitely worse, many of the police-officers and Justices of the Peace in Middlesex execute neither one nor the other, and by their bad example many other Justices throughout the kingdom adopt the same reprehensible practice; and they give to poor persons, when applying to them, a piece of paper, which is called a travelling or permit-pass. This, I am bound to say, is a perfect nullity—a mockery of justice—a great violation of law—a fraud upon the poor objects to whom it is given, as they can obtain no certain subsistence from it—a great fraud upon the townships through which they travel—a fraud upon the place to which they are sent, and the greatest possible nuisance to the kingdom at large; for these poor creatures, if they cannot procure relief, must subsist, by theft, robbery, burglary, or perhaps murder. Many of them are the most debauched, profligate, and desperate characters, and, it is well known, are frequently the emissaries and messengers of treason and rebellion.

I am

I am obliged to say, that every Justice of the Peace who signs such a paper is guilty of a great misdemeanor, and great misconduct in his office, for which he might be very severely punished, by an indictment or a criminal information. Sometimes an apology is made for the Justices, by saying, that it is nothing more than a friendly letter of recommendation: this might be some defence for one vagrant doing to another such an act of kindness; but every Magistrate is bound to act according to the clear and express directions of the law; and his maxim ought ever to be, "Let the track of the law be pursued, though it should lead over burning plough-shares."

From the number of these unwarrantable instruments issued from certain places, it is impossible not to suspect that they are the fruitful sources of illicit revenue.

I am perfectly convinced that no such lawless and unjustifiable papers were ever signed by any Justice within this Isle; and I most earnestly exhort you, that you will do all in your power to put a stop to them in future.

I consider it quite clear, that a man wandering abroad, and begging of constables or parish-officers
in

in every township, is as much a vagrant as he who begs relief of any other individual.

I should therefore advise, that you apprehend all persons with such Passes, and punish them as vagrants, and convey them afterwards, by a constable, to their place of settlement, and send back the pass by the Post, with an admonition, that if another comes from the same person, it will be laid before the Lord Chancellor, or serious notice will be taken of it*.

Constables, you, and every man, who take up a vagrant with a Walking-pass, and carry him before a Justice of the Peace, are entitled to a reward of 10s. for each such vagrant, which I trust every Justice of the Peace within this Isle will immediately order to be paid to you.

This may, for a while, throw a burden upon the rate of the Isle; but I am quite convinced, by a perseverance

* When I am in the country, I myself act as a Justice of the Peace; and by practising what I have here recommended upon many vagrants, who come through the village near which I reside in Hertfordshire, I have greatly diminished this most shameful abuse of the authority of a Magistrate; and by perseverance and by the republication of this Charge, I have great hopes it will soon be wholly suppressed.

perseverance in this conduct, you will be infinitely benefited, and set a most laudable example to the rest of the kingdom.

I think it my duty to state, that the Lord Mayor of London * wrote to me a polite letter upon the subject, stating, that he was convinced of the illegality of the practice, and that he would exert his influence to prevent the issuing of such papers in the City of London.

Yesterday morning, as I passed through Cambridge, I met, one after the other, the Mayor of the Town, and the Chairman of the Quarter Sessions for the County: they both began, of their own accord, to complain to me of the horrid state of the country, arising from this misconduct of the Magistrates; and the latter concluded by saying, that "if you could put an end to it, you would deserve a statue of gold."

Gentlemen, in my humble endeavours to secure
obedience

* Now Mr. Alderman Wood. He was two years together Lord Mayor of London; and though many may differ from his political opinions, yet all must allow that he discharged the duties of the Chief Magistrate of the Metropolis with great assiduity and ability.

obedience to the laws, I am a candidate for no reward but the approbation of my own conscience, and the approbation of honourable men: he who seeks for more is not deserving even of that, and will probably fail to obtain it †.

Upon this occasion, also, I think it my duty to give you my opinion respecting a subject of great importance to the public security; viz. whether a Magistrate can commit an offender charged with a misdemeanour, before an indictment is found against him at the Assizes or Sessions.—You know, Gentlemen, it has been the constant practice, as long as any of you have been in the Commission of the Peace; and I can assure you, that it has been the constant practice of several centuries before that time.

But we have lately been assured, that several eminent Gentlemen at the Bar, and other learned persons,

† It will be seen, in the Second Part of this publication, that my attention had been called by an accident to the subject of Vagrants; and I was induced to publicly resume the subject, because what I had done before this time had not produced the intended effect.

I pursue the latter Part of this Charge first, viz. the Commitments for Misdemeanours, because it may probably be thought of greater importance.

persons, who have investigated the subject, have discovered, that in every instance in which an offender guilty of a misdemeanour, not a breach of the peace, has been committed for want of bail, before an indictment was found, the prisoner was illegally confined, and ought to have been set at liberty by a Habeas Corpus. I was astonished when I read that proposition; and as I never take the law from any man living without fully investigating the subject myself, especially when a doubt is suggested, I can confidently state to you that the proposition is erroneous.

I was not a stranger to the subject, because, within my practice, it has fallen to my lot to extend the limits of the law of misdemeanour. If any one advises another to commit a crime, either felony or misdemeanour, if the crime is not committed, the adviser is guilty of a misdemeanour: it is not an actual breach of the peace, yet it is the duty of every Justice, if the offender cannot find sufficient bail, to commit him, either to the Sessions or to the Assizes, for trial.

Sixteen years ago, when I attended the Sessions at Manchester, an Attorney brought me a brief, requesting that I would prosecute, with as much severity as I could, a man who had advised a
servant

servant to steal the property of his master from a cotton manufactory and to bring cotton to him, and he would reward him liberally. The servant seemed to listen to him; but he was honest, and immediately told his master; and, in order to get further evidence, the master gave the servant a bundle of cotton to take to him, and the prisoner gave the servant three shillings and requested him to bring more as often as he had an opportunity. A constable soon afterwards entered the house, to whom he denied having any cotton, but he found it concealed under a pot: this was a confirmation of the young man's evidence.

I could not indict the prisoner for stealing, because the young man did not steal: I could not indict him for receiving stolen goods, because the goods were not stolen: but I indicted him for *inciting* and *soliciting* a servant to steal and embezzle the goods of his master. He retained two very eminent Counsel to defend him, who contended that to advise a crime, which was not committed, was not an indictable offence; but I was so fortunate as to prevail upon the Magistrates, by a majority of one only, to proceed in the trial. He was sentenced to two years' imprisonment, and to stand in the pillory at the end of the time. The case was afterwards twice argued in the Court of King's Bench;

once by myself, when Lord Kenyon and the Court held, that it was now, and had always been, a misdemeanour to advise a crime, though it was not committed. *The King v. Higgins*, 2 East. 5.

This is not an actual breach of the peace ; but every Justice is bound to commit the offender, or admit to bail, to the Assizes or Sessions.

Some time afterwards I was consulted by Mr. Price, an active Magistrate of Birmingham, what he was to do with a man who was apprehended with a box of counterfeit money, which he was going to send by a carrier to Manchester : but there was no evidence of the delivery of the box, or that he had uttered any base money. I advised him to commit him, or admit him to bail, to the Assizes, and to prefer an indictment against him for procuring counterfeit money, with an intent to utter, or to defraud the King's subjects. He was told by the Officers of the Mint, their Counsel, and many others, that he could not possibly succeed. The indictment was ready for trial, before Mr. Justice Bailey, at Warwick Assizes ; who said, as it was a new case, he would respite his recognisance to the next Assizes, and in the interval would consult the other Judges, who were unanimously of opinion, that it was and had always been a misdemeanour by the common law.

law*. This is not a breach of the peace ; but it is the duty of every Magistrate, when such a case is brought before him, to commit him to the next Sessions or Assizes, if he cannot find sufficient bail.

The public money is now in an excellent state ; and in order to preserve a confidence in it, whenever you apprehend such an offender within this jurisdiction, I should recommend you to commit him to the Assizes, that the example may have more effect, from the greater degree of notoriety.

Every attempt to commit a crime, if the crime be not fully perpetrated, is a misdemeanour. Lord Coke has advanced for this, one general comprehensive maxim ; viz. *Quando aliquid prohibetur, prohibetur et omne per quod devenitur ad illud* ; or, When any thing is prohibited, every thing is prohibited which leads to it ; or, Every step to the commission of a crime is a crime.

There

* The man's name was Heath ; so the case may be cited as the case of the King *v.* Heath. At the subsequent Assizes he was acquitted, because he proved that he was in possession of the box by the order of his master. But, though he was found not guilty, the law upon the subject was fully established. The authorities upon which the Judges relied are, probably, all collected in the Fourth Volume of Christian's Edition of Blackstone's Commentaries, page 99.

There are many shocking indecent misdemeanours of this nature, which frequently are brought before Courts of Justice ; and I will confidently pronounce to you, that it is equally your duty to commit, or bail, for trial, whether they are accompanied with an assault or breach of the peace, or where all the parties concerned are consenting.

It is not necessary at present to be more explicit respecting that class of misdemeanours ; but I shall state to you three of a different kind, with more particularity.

If a man lay a train of gunpowder to your stacks of corn, your barns, or your dwelling-houses, with touchwood on fire, which will not cause an explosion for several hours or several days, and if he be discovered practising this wickedness in a variety of instances, we are now told that the law of England will not permit us to touch his person before the fire actually takes effect, because, till then, there is no felony or breach of the peace. And I shall suppose again, that a wretch is carrying through the country, poisons, which he advises parents to give to their children, or which he himself actually throws into wells or tea-kettles : still, till the poison be administered to, or taken by, some human being, he is not guilty of felony under Lord Ellenborough's Act,

Act; and he is only guilty of a misdemeanour, which could not be considered an actual breach of the peace. And if another wretch, still perhaps more criminal, should carry round, and disperse everywhere, publications full of sedition, blasphemy, and indecency, with intent to poison and corrupt the minds of our innocent and virtuous children and domestics, still we are told that a Justice of Peace has no jurisdiction over him, before an indictment is found by a Grand Jury. And thus these horrid monsters may triumphantly march from one end of the kingdom to the other, *casting firebrands, arrows, and death*; and nothing can arrest their career, but a thunderbolt from the avenging arm of the Almighty.

Surely the wisdom of our ancestors could never leave such a blank in the Constitution, which they have transmitted for our security and happiness!

Thank God, there is no such defect at present, and has not been for many centuries, in our system of laws!

All that is to be found in the books which have been written within the last two or three hundred years, by Lord Coke, Lambard, Crompton, Pulton, Dalton, Lord Hale, Hawkins, Burn, and Blackstone, is the following sentence:—

Justices

Justices of Peace may also issue their warrants, within the precincts of their commission, for apprehending persons charged of crimes within the cognisance of the Sessions of the Peace, and bind them over to appear at the Sessions; and this though the offender be not yet indicted. 1 *Hale*, 579.

But it is urged by some, who will not admit this to be a decisive authority, that Lord Hale meant here, by *crimes*, such crimes as were of the rank of felony; because this sentence is found in a Chapter which professes to treat only of Felonies. Lord Chief Justice Hale was not used to express himself so inaccurately, if that was his meaning.

It may be observed, that it is impossible to give a certain opinion upon a doubtful question of law, without possessing a clear knowledge of its history and progress.

A slight, gentle deviation, consistent with the principles and rules of law, gradually produces an effect or a practice which superficial observers cannot reconcile with ancient authorities, and therefore rashly conclude that what has been sanctioned by a practice for ages never had a legal origin.

This

This is precisely that case.

The good and ancient practice by Magistrates of binding offenders to their good behaviour, and to appear at the next Sessions or Assizes, and there to receive and perform the further orders of the Court, has long been disused; and when the latter half is separated from the former, it is not known again, and escapes observation, though all the authors I have enumerated are full of it.

Lord Chief Justice Hale has said—

“ The Statute 34 *Ed. III.* c. 1. gave Justices of the Peace power to apprehend *malefactors*, and to commit them to close custody, or to bind them to their good behaviour; which was not intended perpetual, but in nature of bail, viz. to appear at such a day at their Sessions, and in the mean time to be of good behaviour.” 2 *Hale*, 156.

This was an excellent mode of preventing a repetition of the crime, and also the commission of any other crime of the same rank, or even any breach of the peace; for if he was guilty of any such crime before he appeared at the Sessions or Assizes, the recognisance was forfeited, and he and his bail would then have been compelled to pay the sum specified
in

in it; and it also secured his attendance at the Assizes or Sessions, when he would be detained till he pleaded to an indictment, if any were found against him: if such an indictment was found, he either was detained in custody by the order of the Court, or entered into a fresh recognisance to appear at the next Assizes or Sessions to try his traverse, that is, the charge in the indictment to which he had pleaded Not guilty.

The binding to the good behaviour has probably been disused from a respect to the personal liberty of the subject, and from pity and compassion to the defendant, who, perhaps, could find friends who would be sureties for the event of his appearance in the Court to answer to an indictment, but who would not risk their money upon the failure of that condition and also upon the failure of any one of the infinite conditions, which were included in his being of good behaviour to the King and to all his liege subjects.

For seditious and blasphemous words uttered, the offender might always have been bound to his good behaviour: and therefore it would follow, for a much stronger reason, that the authors of all seditious and blasphemous libels might be so bound.

An

An indecent libel is now punishable, like all other libels against the Government and against Religion; but it was once thought that that species of crime was punishable only in the Ecclesiastical Courts, till Sir Philip York, afterwards the illustrious Lord Hardwicke, when he was Attorney General, prosecuted a man for an indecent publication; and the Court of King's Bench unanimously held it was a libel and a temporal crime, and the prisoner was set in the pillory; and Sir John Strange, the Reporter, adds, "as he well deserved." 2 *Stra.* 788.

In that case, it is well explained by the Learned Attorney General, that the Christian Religion and sound morality are the two main pillars of the British Government; and he who writes in derogation of either, is an immediate libeller of the government of his country.

But Hawkins, who wrote before that case was decided, though he says that the author of a book full of ribaldry cannot be prosecuted for a libel, yet adds, *the author may be bound to his good behaviour, as a scandalous person of evil fame.* 1 *Leach, Hawk.* 355.

I have not had the misfortune to see any of those blasphemous publications, which the itinerant scandalous persons of evil fame are employed to disperse
throughout

throughout the kingdom; but I am informed that they are of so diabolical a nature, that they must cause the blood of every one not familiarized to them to run cold with horror.

If any of them should be brought within the jurisdiction of this Isle, I most earnestly exhort the Magistrates to apprehend the offender by their warrant, and to proceed according to the mode prescribed by Lord Hale, Hawkins, and all the authors upon the subject; viz. to bind them over, with sufficient sureties, to appear at the next Assizes to be held for this Isle, and in the mean time to be of good behaviour to the King and to all his liege people. There are forms in abundance. Every Lawyer, I think, must admit this is a mode of proceeding both legal and constitutional.

You, Gentlemen Magistrates, at your Quarter Sessions, have precisely the same jurisdiction over libel as the four Judges of the Court of King's Bench; so also I, alone presiding in this Court, have the same power: but as such prosecutions in the country are rare, if you should have occasion to commit or bind over any one in the manner described, I should recommend you to commit him, or bind him in the recognisance to appear at the Assizes, rather than the Sessions.

I do

I do not recommend this from any apprehension that you would not do full justice in the case as substantially and effectually as myself; but it may be presumed, that, from the habits of my life, I am better acquainted with the forms of proceeding: and it might be objected, though the same objection may be made to every commitment to the Sessions, that the party is in some degree prejudged by the committing Magistrate or Magistrates. The law in this case affords abundant protection to the liberty of the subject: for, besides the commitment of the Magistrate, which ought to be founded upon an honest investigation and correct knowledge of law, three further decisions, perfectly independent of each other, must concur, before the party accused can suffer the slightest punishment;—the Grand Jury must find a true bill, perfectly uninfluenced by the commitment of the Magistrate; the Petty Jury must fully try him, without the least bias from any previous investigation; and if they, as they are now authorized by a late Statute, should give a general verdict of guilty, the Judge is bound diligently to examine the publication stated in the Record; and if he, in his judgment, think that it does not in law amount to a libel, he is bound to arrest the judgment, and to discharge the defendant from all punishment and further prosecution.

This

" This is not new-made law; it has existed for ages; and its origin is lost in the clouds of antiquity.

" It is thus that the liberty of Englishmen has been secured: Liberty is a word much used, but little understood; it is that delicate point, equally remote from tyranny and licentiousness: if it be moved either way, tyranny or licentiousness, equally productive of human misery, must predominate.

" It is that point from which the greatest happiness results to the subject, from the just administration of good laws, and where he enjoys the greatest security of the long continuance of that happiness.

" One of the most profound Patriots of antiquity, whose mind has been thought to have been illumined by a ray of divine inspiration, seems to have been peculiarly inspired by the genius of the British Constitution, in his eloquent and just description of Law and Liberty; which he concludes by saying—

" *Legum Ministri, Magistratus; legum interpretes, Judices; legum denique idcirco omnes servi sumus, ut liberi esse possimus.*"

CIC. PRO CLUENTIO.

" The ministers of the laws are the Magistrates;
the

the interpreters of the laws are the Judges : in short, we are all slaves to the laws, for this purpose, that we may enjoy the blessings of liberty.”*

* It is an act of tyrannical and arbitrary power, and equally destructive of the liberties of Englishmen, whether a Justice of the Peace, a Jury, or a Judge, act contrary to law.

The following words of that great man, whom I have cited above, are applicable to all of them:—“ *Religiosum est quod jurati legibus judicarent.*” *Cic. de Juven.*

It is the conscientious duty of every one, who has taken an oath to do it, to decide according to law.

He who acts in defiance of his oath, violates the laws of his country, destroys the liberties of his fellow-subjects, and commits a foul perjury before God and man.

CHAP. II.

COMMITMENTS FOR MISDEMEANOURS FURTHER CONSIDERED.

THE Attorney- and Solicitor-General gave an Opinion, that Justices of the Peace were authorized by law to commit persons who had been guilty of Libels, to the public jails, or houses of correction; or admit them to bail, if they could find bail, to appear at the next Assizes or Quarter Sessions, and to answer an indictment to be there preferred against them. This Opinion was transmitted by the Secretary of State for the Home Department to the Lord Lieutenant of each County, with a direction that he should lay it before the Justices assembled at their next Quarter Sessions.

This Letter, with the Opinion, was called "Lord Sidmouth's Circular." The author of this publication does not discuss the political propriety or expediency

expediency of the subject. He confines his investigation to the examination of the principles of law, and the decisions of courts of justice upon the subject; from which alone Justices of the Peace, and all Judges, must determine what the law is at present, and what all judgments of the courts of law will be in future.

The opinions of an Attorney- or Solicitor-General do not constitute law; nor do the Resolutions of either House of Parliament, or of both Houses of Parliament: but we pay respect to them, as a number of learned men, who have applied their minds seriously and assiduously to the subject. But every one filling a judicial situation, whether by his own fire-side, at the Sessions, at the Assizes, in the King's Bench, or in the House of Lords sitting as the final court of appeal, must convince himself, to the best of his ability, what is the law upon the subject; and that he must most religiously adopt, without regard to the wishes of any set of men, either in office or out of office. A Popular Judge is an odious thing; that is, he who acts contrary to his conscience, and in violation of his solemn oath, in order to gain popularity, is the most wicked and detestable of all human beings.

The legality of the Opinion of the Attorney- and Solicitor-General was debated in each House of Parliament : and several eminent Lawyers in each House vehemently contended, that not only Magistrates had no authority to commit for libel, but had no authority to commit for any misdemeanour whatever, which was not a breach of the peace : but a considerable majority in each House voted that Magistrates ought to commit, or hold to bail, all persons who had been guilty of libel.

In the following Session of Parliament, Lord Erskine brought in a Bill, intituled “ An Act to prevent Arrests before Indictment found* :” and the
House

* “ *A BILL, intituled An Act to prevent Arrests in Matters of Libel before Indictment found.*”

“ Whereas doubts have arisen whether it be lawful for any Justice or Justices of the Peace to apprehend, commit, or hold to bail any person or persons upon the charge of being the author or authors, publisher or publishers of any writing, before indictment found, or due presentment of the same as a libel ; Be it therefore declared and enacted, by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That it shall not be lawful for any Justice or Justices of the Peace to apprehend, commit, or hold to bail, any person or persons upon the charge of being the author or authors, publisher or publishers

House of Lords made an order, that the Records of the Court of King's Bench should be searched, to ascertain whether any, and how many, had been bound over to appear in the Court of King's Bench, and to answer to such matters as shall be objected against them, before an information was filed, or an indictment was found by a Grand Jury for a libel.

The Master of the Crown Office returned, that they had searched the Records from the first year of Queen Anne, and that it appeared there were no less than 128 instances in which parties had been bound by recognisance, either by the Judges of the Court of King's Bench, or by Justices of the Peace, to appear in the Court of King's Bench, and to answer such matters as should be objected against

lishers of any writing, until after indictment found, or due presentment of the same as a libel. Provided always, that nothing herein contained shall extend or be construed to extend to any of his Majesty's Secretaries of State, nor to any Judge of the King's Bench, acting under the authority of an Act passed in the forty-eighth year of the reign of his present Majesty, intituled *An Act for amending the Law with regard to the course of proceeding on Indictments and Informations in the Court of King's Bench in certain cases; for authorizing the execution in Scotland of certain warrants issued for offences committed in England; and for requiring officers taking bail in the King's suit to assign the bail-bonds to the King.*

against them ; and who were afterwards prosecuted, by information on indictment, for publishing seditious, blasphemous, or obscene libels :

34	being in the reign of Queen Anne.
36 King Geo. I.
53 King Geo. II.
5 King Geo. III.
<hr/>	
Total	128

The account fills sixteen folio pages. It will be sufficient here to give the following extracts from it :—

“AN ACCOUNT of the RECOGNIZANCES, since the Reign of Queen Anne, conditioned for the Appearance of Persons in the Court of King’s Bench, to answer to such Matters as should be objected against them ; against which Persons, after the giving of such Recognizances, Prosecution by Information, or Indictment for Libel, have been instituted ; specifying the Dates of such Recognizances, by what Magistrates the same were taken, and specifying by Name the Parties giving the same ;—returned by His Majesty’s Coroner and Attorney in the said Court, in obedience to an Order of the House of Lords, dated 23d May, 1817.

The Files of the Recognizances, and of Informations and Indictments, from the Year 1689 to the Commencement of the Reign of Queen Anne, have not yet been examined, and it would require some considerable Time to inspect them : it has therefore been thought more respectful to submit the Result of the Examination which has taken place, without further Delay.

The

The Files of Recognizances, and of Informations and Indictments, from 1640 to 1689, are, it is apprehended, in the Custody of the Clerk of the Upper Treasury in the Court of King's Bench.

1704. Robert Ferguson gave a Recognizance, upon
3 Anne, a Writ of Habeas Corpus ad subjiciendum, before
6th April. R. Tracey, in 1000*l.*—500*l.* 500*l.*; conditioned
for his appearing in the Court of Queen's Bench.

Trinity Term, 3 Anne, an Information was
filed against him for publishing a Seditious
Libel.

1707. Elias Marion, John Dande, and Nicholas Fachio,
9th May. severally gave Recognizances in 40*l.*—20*l.* 20*l.*
before J. Holt; conditioned for their appearing
and answering in the Court of Queen's Bench.

Easter Term, 6 Anne, an Information was filed
against them for publishing a Blasphemous French
Libel.

1715. Daniel Defoe gave a Recognizance in 800*l.*—
14th April. 300*l.* 300*l.* before T. Parker; conditioned for
his appearing and answering in the Court of
Queen's Bench.

Easter Term, 12 Anne, an Information was
filed against him for publishing a Seditious Libel.

1 Geo. 1. Daniel Defoe gave a Recognizance in 100*l.*—
28th Aug. 50*l.* 50*l.*; conditioned for his appearing in the
Court of King's Bench before E. Lewis.

Michaelmas Term, 1 Geo. 1. an Information
was filed against him for publishing a Seditious
Libel.

5th April. Thomas Kelsall gave a Recognizance in 600*l.*
with Three Bail in 200*l.* each, before G. Tilson;
conditioned

conditioned for his appearing and answering in the Court of King's Bench.

Easter Term, 1 Geo. 1. an Information was filed against him for publishing a Seditious Sermon.

1718. Edward Biss gave a Recognizance in 2000*l.*—
19th July. 1000*l.* 1000*l.* before J. Pratt, upon a Writ of Habeas Corpus ad subjiciendum; conditioned for his appearing and answering in the Court of King's Bench.

Michaelmas Term, 5 Geo. 1. an Information was filed against him for Treasonable and Seditious Preaching.

8 Geo. 1. William Muller alias Miller gave a Recogni-
18th June. zance in 400*l.*—200*l.* 200*l.* before J. Fortescue; conditioned for his appearing and answering in the Court of King's Bench.

Easter Term, 9 Geo. 1. an Information was filed against him for a Libel on the House of Commons.

14th July. Richard Phillips gave a like Recognizance in 2000*l.*—1000*l.* 1000*l.* before John Pratt; conditioned for his appearing and answering in the Court of King's Bench.

Trinity Term, 9 Geo. 1. an Information was filed against him for publishing a Seditious Libel.

11 Geo. 1. Thomas Woolston gave a Recognizance in
4th Mar. 200*l.*—100*l.* 100*l.* before G. Tilson; conditioned for his appearing and answering in the Court of King's Bench.

Trinity Term, 11 Geo. 1. an Information was
filed

filed against him for publishing an impious Libel on the Christian Religion.

- 11 Geo. 1. Edmund Curl gave a Recognizance in 200*l*.—
6th Mar. 100*l*. 100*l*. before G. Tilson; conditioned for his
appearing and answering in the Court of King's
Bench.

Trinity Term, 11 Geo. 1. Two Informations
were filed against him for publishing Two Obscene
Libels.

- 12 Geo. 1. Thomas Meighan gave a Recognizance in
22d Jan. 200*l*.—100*l*. 100*l*. before G. Tilson; condi-
tioned for his appearing and answering in the
Court of King's Bench.

Easter Term, 12 Geo. 1. an Information was
filed against him for publishing an Impious and
Wicked Libel.

- 6 Geo. 2. Albert Count Passerano gave a Recognizance
2d Dec. in 400*l*.—200*l*. 200*l*. before C. Delafaye; con-
ditioned for his appearing and answering in the
Court of King's Bench.

Hilary Term, 6 Geo. 2. an Information was
filed against him for a Blasphemous Libel.

- 5th Dec. William Mears gave a Recognizance in 400*l*.
—200*l*. 200*l*. before William Billers; condi-
tioned for his appearing and answering in the
Court of King's Bench.

Trinity Term, 6 Geo. 2. an Information was
filed against him for publishing a Blasphemous
Libel.

- 7 Geo. 2. Samuel Aris gave a Recognizance in 200*l*.—
18th Jan. 100*l*. 100*l*. before G. Tilson and E. Weston;
conditioned

conditioned for his appearing and answering in the Court of King's Bench.

Trinity Term, 7 and 8 Geo. 2. an Information was filed against him for publishing a Libel on the House of Commons.

11 Geo. 2. Thomas Meigham gave a Recognizance in 380*l*.
4th Oct. —150*l*. 150*l*. before S. Buckley; conditioned for his appearing and answering in the Court of King's Bench.

Michaelmas Term, 11 Geo. 2. an Information was filed against him for publishing an Impious and Superstitious Libel.

12 Geo. 2. John Meers gave a Recognizance in 200*l*.—
16th Aug. 100*l*. 100*l*. before E. Weston; conditioned for his appearing and answering in the Court of King's Bench.

Michaelmas Term, 12 Geo. 2. an Information was filed against him for publishing a Libel on the King of Sweden.

13 Geo. 2. John Purser gave a Recognizance in the same
2d July. sums, before Mr. Courand; conditioned for his appearing and answering in the Court of King's Bench.

Last Day of Trinity Term, 13 Geo. 2. an Information was filed against him for a Libel on the House of Commons.

1748. William Ward gave a like Recognizance in
25d June. 200*l*.—100*l*. 100*l*. before "Bedford" (Secretary of State); conditioned for his appearing and answering in the Court of King's Bench.

Trinity Term, 22 & 23 Geo. 2. a like Information was filed against him.

30th June. Thomas Cooke gave a Recognizance in the same Sums, before "Bedford" (Secretary of State); conditioned as last above.

Trinity Term, 22 & 23 Geo. 2. a like Information was filed against him.

23 Geo. 2. George Forster gave a Recognizance in 100*l*.
1st Oct. —50*l*. 50*l*. before L. Stanhope; conditioned for his appearing and answering in the Court of King's Bench.

Trinity Term, 24 Geo. 2. an Information was filed against him for publishing a Libellous Print.

Same Day. Henry Lewis gave a Recognizance in the same Sums, before L. Stanhope; conditioned as last above.

Trinity Term, 24 Geo. 2. a like Information was filed against him.

23d Oct. Thomas Gardiner gave a Recognizance in 100*l*.—50*l*. 50*l*. before L. Stanhope; conditioned for his appearing and answering in the Court of King's Bench.

Trinity Term, 24 Geo. 2. an Information was filed against him for publishing a Libellous Caricature Print.

24th Oct. John Seagrove gave a Recognizance in 200*l*.—50*l*. 50*l*. before L. Stanhope; conditioned for his appearing and answering in the Court of King's Bench.

Trinity Term, 24 Geo. 2. a like Information was filed against him.

27th Jan. John Purser gave a Recognizance in 400*l*.—200*l*. 200*l*. before L. Stanhope; conditioned for his appearing and answering in the Court of King's Bench.

Easter

Easter Term, 23 Geo. 2. an Information was filed against him for publishing an Obscene Libel.

30th Apr. William Owen gave a Recognizance in 80*l.* —40*l.* 40*l.* before L. Stanhope; conditioned for his appearing and answering in the Court of King's Bench.

Easter Term, 23 Geo. 2. an Information was filed against him for publishing a Seditious Libel.

25 Geo. 2. James How gave a Recognizance in 100*l.*
11th July. —50*l.* 50*l.* before L. Stanhope; conditioned for his appearing and answering in the Court of King's Bench.

Michaelmas Term, 25 Geo. 2. an Information was filed against him for publishing a Libel on the House of Commons.

12th July. William Owen gave a Recognizance in 200*l.* —100*l.* 100*l.* before W. Lee, upon a Writ of Habeas Corpus ad subjiciendum; conditioned for his appearance and answering in the Court of King's Bench.

Michaelmas Term, 25 Geo. 2. a like Information was filed against him.

42 Geo. 3. Alexander Hogg gave a Recognizance in 200*l.*
12th Mar. —100*l.* 100*l.* before John Eamer, Mayor of London; conditioned for his appearing and answering in the Court of King's Bench.

Easter Term, 42 Geo. 3. an Information was filed against him for publishing Obscene Libels.

49 Geo. 3. Garret Gorman gave a Recognizance in 100*l.*
23d Dec. —50*l.* 50*l.* before Mr. Justice Bayley; conditioned for his appearing in the Court of King's Bench, and answering, &c.

23d Dec. Hilary Term, 49 Geo. 3. an Information was filed against him for publishing a Libel on the Duke of York.

Besides the above Recognizances, several have been found conditioned for the Appearance of Persons in the Court of King's Bench, against whom Prosecutions by Information and Indictment have been *afterwards* instituted, *for speaking seditious Words*; but it being doubtful whether these Cases come within the Order of the House or not, they are not here detailed.

It appears, by various Returns of Writs of Habeas Corpus issued during the period comprized in this Return, that several Persons have been taken into Custody, by virtue of Warrants issued against them, for printing and publishing Libels, before any Indictment found, or Information filed against them; but such Persons not appearing to have been admitted to Bail, their Cases are not included in this Return.

E. H. LUSHINGTON,

His Majesty's Coronor and Attorney
in the Court of King's Bench."

I have selected the most remarkable Cases: all the rest were generally for Seditious Libels.

In the above-collected instances, it is only stated, that the parties were bound in a recognisance to appear to answer to such matters as should be objected against them.

This led me to inquire of Mr. Dealtry, the Chief Clerk in the Crown Office, by whose diligence they
were

were chiefly collected, if he found no other condition included in the recognisance; when he assured me, that, in the earliest recognisances, the parties were not only bound to appear and answer, &c. in the next Term, but also, *in the mean time, to be of good behaviour to the King, and to all his liege subjects.*

This was a great satisfaction, I may say triumph, to me; it was the *experimentum crucis*: the fact and practice confirmed the theory. It saved me the trouble of applying to the Custos Rotulorum of some county, and the labour and anxiety of unfolding and deciphering many a dusty mouldering record. Here I found, at the fountain head, at once, that the practice was agreeable to the ancient enactment of the Legislature; and that the history of the Law, and the reasons for it, and the antient and modern practice, are all consistent and uniform. *Cotemporanea Consuetudo optimus Interpres.* It induces me to repeat, that without a knowledge of the history of the Law, we easily wander into error and confusion; and that it is the polar star, which can best guide us, when we are in doubt and difficulties, in the present time.

CHAP. III.

COMMITMENT FOR LIBELS.

THE following Cases are confirmatory of the practice evidenced by the numerous instances produced from the Court of King's Bench; though, in the first Case, the Court expressed a doubt whether the party ought to be bound to his good behaviour, from the peculiar circumstances of that case, which were as follow :—

Defendant being taken up, by virtue of a warrant from the Secretary of State, for publishing *Old England's Te Deum*, a blasphemous libel, was now brought up by Habeas Corpus, in order to be bailed; and offering bail to enter into the common recognisances for his appearance from time to time, to answer such matters as should be objected against him on behalf of the Crown;—Mr. Attorney General insisted on bail for the defendant's good behaviour also. The Lord Chief Justice said, it had often been taken both ways, and he intended to take the opinion of all the Judges.

Judges: so, at present, defendant himself only entered into a recognisance for his appearance, and into a rule to put in bail for his good behaviour, if the Judges, or the major part of them, should be of opinion that he ought. *Rex v. Shucburgh, B. R. 1 Wilson, 29.*

In the preceding case, the Chief Justice of the King's Bench said that the recognisance had been often taken both ways, viz. to appear and answer, and, in the mean time, to be of good behaviour: the legality of either way could not be disputed; but the propriety of binding that particular defendant, from the circumstance of his case, could only be the ground of the doubt.

Or it might perhaps be doubtful whether the Court of King's Bench had, in such cases, the power and discretion of a Justice of the Peace; or, if they had it, whether it would be wise and expedient to exercise it.*

But if one Judge of the Court of King's Bench, like a Justice of the Peace, could take such a recognisance,

* In *Elizabeth Claxton's* case, the Court of King's Bench quashed the commitment of the Justice of the Peace, and, upon evidence laid before them, made an original order, that she should be committed till she found sureties of good behaviour. 12 *Mod.* 566. See this case, at length, beyond.

cognisance, the whole sitting together could not, I think, have a less power. But the Court of King's Bench might very properly resolve to bind a party only to appear and answer in a sufficient recognisance; and if, in the mean time, he committed any similar offence, the ordinary jurisdictions might bind him to keep the peace, or to be of good behaviour, as the case required.

But this case does not afford the slightest reason to doubt that a Justice of the Peace has not such a power.

The King v. Wilkes, Esq. Member of Parliament.
2 Wils. 151.

Mr. Wilkes was committed to the Tower by the Secretaries of State, the Earl of Egremont and the Earl of Halifax, for being the author and publisher of a most infamous and seditious libel, entitled the North Briton, Number XLV.

He was brought up to the Court of Common Pleas by a Habeas Corpus; when Chief Justice Pratt (afterwards Lord Camden) and the Court decided, that it is not necessary that the evidence given before a Magistrate should be stated in the warrant of commitment.

In

In a commitment for a libel, it is not necessary to state the libel in the warrant.

That Lord Coke, 4 *Inst.* 45. says, the privilege of Parliament holds, unless it be in three cases; viz. *treason, felony, and the peace.*

Privilege of Parliament holds in informations for the King, unless in the cases above excepted. The case of an information against Lord Tankerville for bribery, 4 *Annæ*, was within the Privilege of Parliament. See the Resolution of Lords and Commons, anno 1675: "We are all of opinion that a libel is not a breach of the peace: it tends to a breach, and that is the utmost, &c.; and therefore Mr. Wilkes must be discharged from his imprisonment."

This judgment only decides, that a libeller was not bound to find sureties to keep the peace; and, therefore, no Member of Parliament can be committed, or held to bail, before conviction.

It will follow then, from this decision, and the general Privilege of Parliament, that a Member of either House of Parliament can in no instance be committed or bound over by a Magistrate; and therefore he cannot be apprehended, before trial, for any misdemeanour which is not a breach of the peace.

The

The following sentence is in the first volume of Rushworth's Collections.

“ In 2. *Car.* The Lords, upon searching precedents, resolve that no Lord of Parliament, within the usual time of privilege, shall be imprisoned, unless for treason, felony, or refusing to give security of the peace.”—1 *Rush.* 365.

In the case of Mr. Wilkes, the learned Serjeants who argued the case never suggested that an individual who had not Privilege of Parliament could not be committed, or held to bail, for a libel; nor is there any intimation to that effect in the judgment of Lord Camden; but the whole of the argument is to prove that a libel was not a breach of the peace, and therefore a Member of Parliament was protected against all imprisonment before conviction for such an offence.

And it is very material to observe, that there is no instance in which any one, who either had Privilege of Parliament, or who had not Privilege of Parliament, was bound over to keep the peace for a libel; but in all the cases where there is a condition besides that of appearing to answer, it is to be of good behaviour in the mean time.

In the next Sessions after this judgment of Lord Camden and the Court of Common Pleas, the two Houses of Parliament debated the question, whether a Member of Parliament was entitled to privilege, that is, was protected from arrest for the offence of publishing a seditious libel; and each House resolved that its Members had no such privilege.

I shall give here the following Extract from the Journals of the House of Lords, with part of the Protest of the Dissenting Lords.

Extract from the Journals of the Lords.

“ Die Martis, 29 Novembris, 1763.

“ The Order of the Day for resuming the adjourned consideration of the Report of the Conference with the Commons of Friday last being read :—The third Resolution of the Commons was read, as follows :

“ ‘ Resolved, by the Commons in Parliament assembled ;

“ ‘ That Privilege of Parliament does not extend to the case of writing and publishing Seditious Libels,

Libels, nor ought to be allowed to obstruct the ordinary course of the laws, in the speedy and effectual prosecution of so heinous and dangerous an offence.'

"And it being moved to agree with the Commons in the said Resolution,—

"The same was objected to, after long debate thereupon.

"The question was put, whether to agree with the Commons in the said Resolution. It was resolved in the affirmative.

"Dissentient :

"Because we cannot hear, without the utmost concern and astonishment, a doctrine advanced now, for the first time, in this House, which we apprehend to be new, dangerous, and unwarrantable ; viz. that the personal privilege of both Houses of Parliament has never held, and ought not to hold, in the case of any criminal prosecution whatsoever ; by which all the records of Parliament, all history, all the authorities of the gravest and soberest Judges, are entirely rescinded ; and the fundamental principles of the Constitution, with regard to the independence of Parliament, torn up, and
D 2
buried

buried under the ruins of our most established rights.

“But if a libel could possibly, by an abuse of language, or has anywhere been called, inadvertently, a breach of the peace, there is not the least colour to say that the libeller can be bound to give securities for the peace; for the following reasons.

“Because none can be so bound, unless he be taken in the actual commitment of a breach of the peace, striking or putting some one or more of his Majesty’s subjects in fear.

“Because there is no authority, or even ambiguous hint, in any law book, that he may be so bound.

“Because no libeller, in fact, was ever so bound.”

The Court of Common Pleas having decided that a Member of Parliament is entitled to his privilege if he publishes a seditious libel, (which must be true of every other libel); and the two Houses of Parliament having resolved that they have no such privilege; how then is a Justice of the Peace to act in such a case? Is he bound to treat a Member of the House of Lords, or a Member of the House of Commons, like every other subject?

or

or is he justified in proceeding against him, exactly as he has the power of doing when he has been guilty of an assault, or an actual breach of the peace? Acting as a Magistrate, as I do myself, my conduct would be regulated by the following considerations ; viz.

A judgment of a court of law, upon a subject of law with all Judges and Magistrates, ought to be considered of higher authority than the resolution of either House of Parliament, or the Resolutions of both jointly. These Resolutions are only the opinion of a number of grave learned men, acting neither as legislators nor as Judges.

In this case, the judgment of the Court of Common Pleas seems to be founded in far better reasons and principles ; for a libel has never been held to be an actual breach of the peace ; but the offenders, in ancient times, were bound over to be of good behaviour, but not to keep the peace. A Member of either House of Parliament was never bound over to his good behaviour, as a person of evil fame ; a Member of either House is, therefore, privileged from arrest before conviction, not only in the case of libels, but in the case of all misdemeanours whatever, which are not breaches of the peace, before conviction.

In

In consequence of these Resolutions, if any Magistrate should bind over, or commit, for want of bail, a Member of either House for the publication of a seditious libel; he could not be punished by either House for a contempt of its authority; but such Member ought to be set at liberty by a Habeas Corpus; and an action and a prosecution might be supported for false imprisonment, though these Resolutions ought to lessen the damages and the punishment. And the House of Lords, in their judicial characters, ought to support the decisions of the Courts of Law.

This Privilege of Parliament extends to all the catalogue of crimes, however flagitious some of them may be; for which Magistrates have only power to bind in a recognisance to appear at the next Assizes or Sessions, to answer to such matters as are objected, if sufficient bail is produced, and in the mean time to be of good behaviour.

They have even this privilege and exemption after an indictment is found, or an information filed, because they cannot be apprehended by a *Capias* or a Bench Warrant.

They can only be compelled to come in and plead to the indictment by a *Venire* and *Distringas*,
by

by which their goods may be taken. They cannot be outlawed, because a *Capias* cannot be sued out against them, which is the foundation of the process of outlawry. A Member of either House may therefore protect himself from punishment in such cases, until the dissolution of the Parliament. Lord Hale says, that, in an indictment of trespass (that is, an indictment for a misdemeanour), the process is *Venire facias*, and, when *Non Inventus* is returned, *Capias* and *Exigent*. 2 Hale, 194.

The following account of the subsequent proceedings against John Wilkes, Esq. contains many important questions of law, which were then decided; and several of them are applicable to indictments at the Quarter Sessions.

In Michaelmas Term, 1764, the 4th year of his present Majesty King George the Third, Sir Fletcher Norton, then his Majesty's Solicitor General, (the office of Attorney General being vacant), exhibited an information against Mr. Wilkes, for having published, and caused to be printed and published, a seditious and scandalous libel—the North Briton, No. XLV.

And

And soon after, he exhibited another Information against him (the office of Attorney General still remaining vacant) for having printed and published, and causing to be printed and published, an obscene and impious libel—An Essay on Woman, &c.

Mr. Wilkes having pleaded "Not Guilty" to both these Informations, and the Records being made up and sealed, and the causes ready for trial, the Counsel for the Crown thought it expedient to amend them, by striking out the word "purport," and in its place inserting the word "tenor." The proposed amendments were, in all those parts of the Information where the charge was, that the libel printed and published by Mr. Wilkes contained matters "to the purport and effect following, to wit;" which the Counsel for the Crown thought it advisable to alter into words importing that such libel contained matters to the "tenor and effect following, to wit."

The Attorney, and also the Clerk in Court of Mr. Wilkes, having received a summons issued by Lord Mansfield, at the request of the Attorney General, attended at the house of Lord Mansfield, on the 20th of February, 1764. The information was so amended. Lord Mansfield having produced
many

many precedents, and having told the Attorney of Mr. Wilkes that his consent was not necessary.

The trial came on at the appointed time, and proceeded in the usual manner; Mr. Wilkes's Counsel and Agents making no objection thereto, nor declining to enter into his defence.

Verdicts were found against him, upon both informations: after which, judgment was duly signed against him in each cause; and writs of Capias were awarded and issued against him, as in ordinary cases of convictions upon informations for misdemeanours.

Upon his non-appearance, the proceedings were carried on to a Proclamation and Exigents: and upon his not appearing on the fifth time of being exacted, he was, by the judgment of the Coroners of the County of Middlesex, according to the law and custom of the realm, outlawed.

On the 29th of April, 1768, the first day of Easter Term, before any process was issued on the Outlawry, Mr. Wilkes voluntarily made his appearance in the Court of King's Bench; and addressed the Court in a speech, in which he complained much of the record, which he contended was illegal
and

and unconstitutional ; and that it rendered all the subsequent proceedings void.

The Attorney General, De Grey, prayed the Court that Mr. Wilkes might be committed : his Counsel prayed that he might be admitted to bail.

Lord Mansfield, to these applications, said, “ He ought to be brought in regularly, upon a return of the Capias by the Sheriff. I have no doubt but that we might take notice of him, upon his voluntary appearance, as the person outlawed, and commit or bail him : but we are not absolutely bound to do it, without some reason to excuse the going out of the regular course.”

On the 27th of April, 1768, he surrendered himself to the Sheriff of Middlesex, upon a Capias Utlagatum issued against him ; and was brought into Court upon the return of a Habeas Corpus, directed to him for that purpose.

The Attorney General then granted his fiat for a Writ of Error, which he had refused to do till the defendant was in custody.

The return to the Habeas Corpus being read, it appeared that the defendant was charged with two outlawries ;

outlawries; viz. one on each conviction for the respective misdemeanours before mentioned. A Writ of Error in each cause was delivered into Court. They were the same in both causes.

Errors being assigned, and the Attorney General having joined, Lord Mansfield said, "Let the Writs of Error be allowed."

His Lordship then asked the Attorney General, to what prison he prayed that the defendant might be committed.

Mr. Attorney General answered, "To the Marshal."

Lord Mansfield.—"Let him be committed to the Marshal."

Mr. Serjeant Glynn moved, that Mr. Wilkes might be admitted to bail, on 4 and 5 *W. & M.* c. 18. s. 4. which he said extended to cases of misdemeanour.

He and the other Counsel urged the spirit, scope, and design of this statute, as well as the words of it; as arguments to prove, that it extended
to

to misdemeanours; and that the preamble and enacting part of it do both of them apply to Mr. Wilkes's case. And they said, that, even if the words were doubtful, the construction of them ought to be such as would be most favourable to liberty. But these words are express : they include all causes, except treason and felony.

“ For the more easy and speedy reversing of Outlawries in the Court of King's Bench, be it enacted, that no person or persons whatsoever, who are or shall be outlawed in the said Court, for any cause, matter, or thing whatsoever (treason and felony only excepted), shall be compelled to come in person into, or appear in person in the said Court, to reverse such Outlawry ; but shall or may appear by Attorney, and reverse the same, except where special bail shall be ordered by the said Court.”

The Court, viz. Lord Mansfield, and the Judges Yates, Aston, and Willes, having heard the case fully argued, declared their unanimous opinion, that Mr. Wilkes, under his present circumstances of standing convicted of a criminal misdemeanour, had no right to demand being admitted to bail under the Act of Parliament.

His

His Counsel then moved, that he might be bailed under the general discretionary power of the Court.

Lord Mansfield.—“ I have said, that I knew no case where a person convicted of a misdemeanour has been admitted to bail without consent of the Prosecutor. If any gentleman knows any such case, I should be glad to be informed of it: I know of none. We cannot, therefore, do it, if the Attorney General does not consent. For, we must act alike in all cases of like nature; and what we do now, ought to be agreeable to former precedents, and will become a precedent in future cases of a like kind.”

The Court declining to bail him without the consent of the Attorney-General, as prosecuting for the Crown, he was committed to the Marshal.

On the 8th of June, 1768, the errors assigned to reverse the Outlawry, Lord Mansfield and the Court gave their judgment at length.

I shall extract the following general sentences.

“ Outlawry is a very important part of that law. Yet it is no wonder that the forms and method of proceeding

And, therefore, Serjeant Glynn admitted, that criminal outlawries were not to be reversed : of course, an error must be found.

“ One objection was, that an information could not be filed by the Solicitor General, when there was no Attorney General.

“ Second objection, that an outlawry does not lie upon an information.

“ Third objection, that outlawry does not lie from the nature of the offence.

“ The next was, as to the proclamations not being sufficiently set out.

“ The next, that it does not appear that the defendant was exacted at the County Court of the County of Middlesex, and that the County Court of Middlesex was not sufficiently described.”

Lord Mansfield having proved, by reasons and authorities, that there was no foundation for any of the objections before he came to the last, seeing an immense crowd fill and surround Westminster Hall, burst out into a strain of impassioned and affecting eloquence,

eloquence, of which I shall give here a few sentences.

“ But here let me pause!—It is fit to take some notice of the various terrors held out: the numerous crowds which have attended, and now attend, in and about the Hall, out of all reach of what passes in Court; and the tumults which, in other places, have shamefully insulted all order and government. Audacious addresses, in print, dictate to us, from those they call the people, the judgment to be given now, and afterwards, upon the conviction.

“ Reasons of policy are urged, from danger to the kingdom, by commotions and general confusion.

“ Give me leave to take the opportunity of this great and respectable audience, to let the whole world know, all such attempts are vain.—If rebellion was the certain consequence, we are bound to say, *Fiat justitia, ruat cælum*.

“ I pass over many anonymous letters I have received. Whoever the writers are, they take the wrong way. I will do my duty unawed. What am I to fear? That *mendax infamia* from the
E
press

And, therefore, Serjeant Glynn admitted, that criminal outlawries were not to be reversed : of course, an error must be found.

“ One objection was, that an information could not be filed by the Solicitor General, when there was no Attorney General.

“ Second objection, that an outlawry does not lie upon an information.

“ Third objection, that outlawry does not lie from the nature of the offence.

“ The next was, as to the proclamations not being sufficiently set out.

“ The next, that it does not appear that the defendant was exacted at the County Court of the County of Middlesex, and that the County Court of Middlesex was not sufficiently described.”

Lord Mansfield having proved, by reasons and authorities, that there was no foundation for any of the objections before he came to the last, seeing an immense crowd fill and surround Westminster Hall, burst out into a strain of impassioned and affecting eloquence,

eloquence, of which I shall give here a few sentences.

“ But here let me pause!—It is fit to take some notice of the various terrors held out: the numerous crowds which have attended, and now attend, in and about the Hall, out of all reach of what passes in Court; and the tumults which, in other places, have shamefully insulted all order and government. Audacious addresses, in print, dictate to us, from those they call the people, the judgment to be given now, and afterwards, upon the conviction.

“ Reasons of policy are urged, from danger to the kingdom, by commotions and general confusion.

“ Give me leave to take the opportunity of this great and respectable audience, to let the whole world know, all such attempts are vain.—If rebellion was the certain consequence, we are bound to say, *Fiat justitia, ruat cælum*.

“ I pass over many anonymous letters I have received. Whoever the writers are, they take the wrong way. I will do my duty unawed. What am I to fear? That *mendax infamia* from the

press, which daily coins false facts and false motives, the lies of calumny, carry no terror to me. I trust, that my temper of mind, and the colour and conduct of my life, have given me a suit of armour against these arrows.

“I honour the King and respect the People: but many things, acquired by the favour of either, are, in my account, objects not worth ambition. I wish popularity; but it is that popularity which follows, not that which is run after. It is that popularity, which sooner or later, never fails to do justice to the pursuit of noble ends by noble means.

“I will not do that which my conscience tells me is wrong, upon this occasion, to gain the huzzas of thousands, or the daily praise of all the papers which come from the press: I will not avoid doing what I think is right, though it should draw on me the whole artillery of libels—all that malice and falsehood can invent, or the credulity of a deluded populace can swallow.

“I can say, with a great magistrate, upon an occasion and under circumstances not unlike, ‘Ego hoc animo semper fui, ut invidiam virtute partam, gloriam, non invidiam, putarem.’

“The

"The threats go farther than abuse: personal violence is denounced. I do not believe it: it is not the genius of the worst of men of this country, in the worst of times. But I have set my mind at rest. The last end that can happen to any man never comes too soon, if he falls in support of the law and liberty of his country (for liberty is synonymous to law and government): such a shock, too, might be productive of public good: it might awake the better part of the kingdom of that lethargy which seems to have benumbed them; and bring the mad part back to their senses, as men intoxicated are sometimes stunned into sobriety."

The venerable and noble Judge having concluded this most eloquent address to the audience, proceeded to prove that for want of a sufficient description of "the Sheriff's County Court," he was bound, by precedents, to reverse the Outlawry.

The other three Judges gave their opinions to the same effect.

Rules were then granted, to shew cause why the judgment should not be arrested, and why the verdict should not be set aside and a new trial granted.

Mr. Wilkes was removed to the custody of the Marshal; and was brought up again on the 14th of June, 1786.

The objection in arrest of judgment was, that informations could not be filed by the Solicitor General, and could not be amended after the defendant had pleaded.

The objections in favour of a new trial were, the amendment or alteration of the record, and because it had been made by a single Judge at his Chambers.

It was said, there is a great difference between amending indictments, and amending informations. Indictments are found upon the oaths of a jury, and ought only to be amended by themselves; but informations are as declarations in the King's suit.

Both rules were discharged.

The Attorney General then moved for Lord Mansfield's report of the evidence, the prosecutions having been tried before him at the sittings.

The Records of the Convictions were then read; and Lord Mansfield reported the evidence on each trial.

trial. Mr. Wilkes then moved for the sentence of the Court.

They said, it would be necessary to take time to consider it. The constant course was so. But they would give him notice when they were ready.

Serjeant Glynn wished him to be bailed in the mean time.

They said he knew it could not be done without the consent of the prosecutor; and he was remanded to the custody of the Marshal.

On the 17th of June, 1768, the Court declared they would give judgment the next day; and ordered that the defendant should be brought up accordingly.

On the 18th of June, Mr. Justice Yates, the second Judge, pronounced the sentence of the Court in each cause, viz.

On the information for the North Britain, No. XLV. a fine of 500*l*. and imprisonment for ten calendar months, and till the fine be paid; on the other information, 500*l*. fine, and imprisonment for twelve calendar months after the expiration

ration of the former ten ; and to find security for his good behaviour for seven years, himself in 1000*l.* and two sureties in 500*l.* each ; and to be remanded and imprisoned till the fines be paid and such security given.

Mr. Wilkes desired that his former imprisonment might be considered in the punishment now inflicted upon him.

The Court assured him, that they had fully considered all circumstances both for and against him.

Serjeant Glynn then desired that Mr. Wilkes might have the benefit of a Writ of Error to the House of Lords.

Lord Mansfield said he must apply to the Attorney General, whom he advised to grant it immediately.

The Attorney General said he would grant it immediately.

Mr. Wilkes then desired that it might be put into such a method, that he might have the advantage of the alteration made in the information in the House of Lords.

Lord

Lord Mansfield said he could not alter the law.

A Writ of Error was brought before the House of Lords, *Die Lunæ* 16^o January, 1769.

Counsel having argued the errors assigned, the following questions were put to the Judges.

Whether an information filed by the King's Solicitor General, during the vacancy of the office of the King's Attorney-General, is good in law?

Whether in such a case it is necessary, in point of law, to aver upon the Record, that the Attorney General's office was vacant?

Whether judgment of imprisonment against a defendant, to commence from and after the determination of an imprisonment to which he was before sentenced for another offence, is good in law*?

The

* The Court of Quarter Sessions might thus add for two offences the punishment by imprisonment, for one to commence after the expiration of the other; because they have the power to inflict an imprisonment equal to the sum of both for either offence. But where the imprisonment for each of two offences is fixed from the time of conviction of a Magistrate, or the judgment of the Court, I do not think the imprisonment for one offence can be added to the imprisonment of the other. Such cases frequently occur before Justices acting alone, or at their Petty Sessions.

The Chief Justice of the Common Pleas delivered the unanimous opinion of the Judges, with their reasons for the affirmation of each question.

And it was then adjudged that the judgments of the Court of King's Bench be affirmed.

On the 7th of February, 1770, Counsel moved, that the defendant might be brought up this Term, or before a Judge at Chambers, to enter into the recognisance for his good behaviour for seven years, as the imprisonment will end in the vacation.

The Court ordered, that the recognisance might be taken by any Justice of the Peace for the county of Surrey. See the proceedings at length. *Rex v. Wilkes, Esq.* 4 *Burrow.* 2527.

Several of these questions of law will apply both to the Judges, in the Criminal Court at the Assizes, and to the Justices of the Peace at the Quarter Sessions.

Upon the last point, if a defendant is ordered to enter into a recognisance, with sureties, for his good behaviour, a Justice of Peace may, at any time, go to the jail and take the recognisance; or, after the expiration of the term of imprisonment,
the

the jailer might take the defendant to the house of any neighbouring Justice of the Peace, and when that is done, he must instantly discharge his prisoner.

The following Cases upon Commitment for Libels, are all consistent, and seem necessary to be added, in order to communicate full information upon the subject.

The defendant was a Printer, and was committed in the vacation by a Secretary of State, and on a Habeas Corpus returnable before Chief Justice Parker at his Chamber, he was brought before the Chief Justice, and entered into a recognisance to appear the first day of the Term.

He appeared on that day; and his Counsel moved that he should be discharged, for several exceptions, one of which was, that for a libel a Secretary of State could not commit.

Chief Justice Parker.—“The defendant cannot be discharged; and the warrant is good and legal.”

Justice Eyre.—“He cannot be discharged. A Secretary of State has power to issue a warrant:
it

it was held so in the case of the *Queen v. Kendal*, Salk. 347. and settled in Queen Elizabeth's time. *The Queen v. Derby*, Fort. 140, 1712.

It was moved for an attachment against Dr. Middleton, for writing a libel against a Doctor of Divinity in the University of Cambridge: The libel was contained in his Preface to a Latin book, about the Library of the University, dedicated to Dr. Snape, then Vice-Chancellor. He came into Court voluntarily, and confessed that he was the author; and it was so recorded; and he was fined 50*l.* and ordered to find sureties for his good behaviour. This was an honourable action in Dr. Middleton: for the first motion was made against the Bookseller, for publishing the book; but he was excused, on his getting the Doctor to confess that he was the author as above. *The King v. Doctor Middleton*, Fort. 201.

This is a very extraordinary proceeding. The case does not state that an attachment was granted, or an information was filed, to which he pleaded guilty.

It seems to be a strange method to move for an attachment for a Libel against a private individual.

It

It can only be reconciled with the maxim *Consensus tollit errorem*; and that the Doctor desired that this might be done, that he might not be put to greater trouble and expense.

The defendant was taken up for a libel, and was brought by a Habeas Corpus, and enters into a recognisance with his bail to appear in the King's Bench the first day of Michaelmas Term, *ad respond.*, &c. and not to depart without leave of the Court, and to be of good behaviour in the mean time.

Mr. Attorney exhibited one information the first day of Term for a libel, called The Flying Post: on that information the Attorney enters a *Nolle Prosequi*; and the last day of the Term files another information for the same libel, with another called The Medley; and on this last information the defendant was convicted: and having notice to appear, and not appearing, it was moved to estreat the recognisance; and *per Cur.*, it was estreated: for, though the last libel was subsequent to the recognisance, yet the bail is for him to appear to answer to all things to be objected to him; and though, under *ad respond.*, &c. treason may be included, yet it is all one, for he is only to appear under a certain penalty of 300*l.*; for these recognisances are

are for certain sums, but those of the Plea side not so; and yet anciently bail to an action was special bail to all actions that term, and is now common bail.

The *Nolle Prosequi* is no bar nor discharge, or leave of the Court to depart; for it is only that the Attorney will not proceed further on that information: the information is discharged, but not the person. Judgment is not *quod eat inde sine die*, but *non vult ulterius prosequi, et ideo cessat processus super informationem omnino*. It is no breach of behaviour; if so, there would be *Scire Facias* necessary. Then Harcourt, the master of the office, went down to the Exchequer with this estreat, instead of the Puisne Judge; and they would not receive it. Contrary to usage. The *King v. Ridpath*, *Fort.* 358.*

The Court of Exchequer would not receive it, because it was not brought by a Puisne Judge.

The recognisance was taken before a Justice of Peace, on the 10th of September was twelvemonth; and the condition of it was, that the defendant should appear in this Court on the last day of the
then

* These cases I copy out in the words of the Reporter.

then Michaelmas Term, to answer such matters as should be there objected against him, and not depart without leave of the Court, and to be of his good behaviour in the mean time. The Justice of Peace required him to give bail to this recognisance, and upon his omitting to do it committed him. Soon after the Chief Justice of England granted his Habeas Corpus to bring him up before him; and upon his being brought up, bailed him upon it.

Upon a motion to discharge this recognisance, the Court agreed it to be manifest, that the words "*in the mean time*" must be extended to that period of time, before they should signify their licence for the defendant's departing: and if an information was filed within four terms, it was sufficient to retain him upon his recognisance, unless there was manifest reason to think that this was done only to oppress the subject. The motion was disallowed. *The King v. Franklyn. 2 Barnard, 85, 1731.*

From these authorities, in addition to the general principles of law, it is undeniably true, that a Magistrate may bind over a libeller to appear and answer to such matter as shall be objected against him, either to the Assizes or to the Sessions, and in the mean time to be of good behaviour; and that the Magistrates of the county of Middlesex
may

may so bind over to appear in the Court of King's Bench in the next Term.

In a case in Barnardytton's Reports, Chief Justice Lee is reported to have said, that "there was no occasion to determine whether in general Justices of Peace have authority to bind over to this Court. The person that did this, in the present case, was a Justice of Peace for the county of Middlesex, and undoubtedly he might bind over to this Court; this Court having a jurisdiction of Oyer and Terminer for that county. However, he had before him several precedents of Justices of Peace of other counties binding over to this Court likewise.

In that case, Dr. Earbury had been committed by the Secretary of State; and he was bailed by his Secretary, who was a Justice of Peace for the county of Middlesex; and the recognizance was, that he should keep the peace, and likewise that he shall appear in the Court of King's Bench, to answer such matters as shall be objected against him.

The motion was, that the recognisance should be taken off the file, and be discharged. This was refused: and they said, if the recognisance is illegal the defendant has his remedy another way.

But

But they said, if there had been no prosecution within a year, the defendant was entitled to his discharge. *The King v. Dr. Earbury, 2 Barnard. 293.*

I certainly, as a Justice of Peace for any county except Middlesex, would never bind any one to appear in the Court of King's Bench; because I should think a Magistrate, or a Commissioner of Oyer and Terminer, has no authority to compel a man to do an act out of his own jurisdiction: and if he had the authority, it would be very oppressive to exercise it.

But in the case of a misdemeanour of a serious nature, which it would be proper to prosecute by an information, I should bind him to appear either at the Sessions or the Assizes; and if it could be done, I should so bind him, that a Term might intervene, that he might be prosecuted if it was thought proper by an information.

Chief Justice Dallas, and Baron Wood, were applied to at the Old Bailey, that they would bind a party over to appear in the Court of King's Bench; but they declined doing it, doubting whether they had any such authority.

It

In the precedents, p. 42 *ante*, it appears, that the Lord Mayor of London bound a person to appear in the Court of King's Bench ; but the propriety of the proceeding may be justly questioned.

It is worthy of observation, that in all the precedents of being bound over to appear in the Court of King's Bench for a libel, it does not appear that any one was bound over to prosecute.

In the sequel of this publication, I think I shall be able to shew that that is not necessary, and that, in fact, Justices of the Peace cannot compel any one to prosecute for any misdemeanour, whether it is a breach of the peace or a misdemeanour of a different description.

It has long been the practice, but the practice began by the prosecutor's consent, or by the Magistrates declining to bind over, or commit the defendant, unless the complainant also would consent to be bound to prosecute. But this most important part of the jurisdiction of a Justice of the Peace will be fully explained in a following chapter.

Upon a Writ of Error to the Court of King's Bench, it was decided, that the Court of Quarter Sessions had jurisdiction in the case of Libels of a
private

private nature. *The King v. Summers*, 1 *Keble*, 931. 1 *Lev.* 89.

Two men in that case had written a Letter to a Lady, whom the prosecutor probably was courting, that he was *a debauched person, and had no estate*. One was fined 100*l.* and the other 30*l.* 16 *Car.* II. anno 1664.

It perhaps was then doubtful, whether the Quarter Sessions had cognizance of Libels, because they had been prosecuted in the Star Chamber, which had been abolished in the year 1640.

And in all cases of libels written to offend the modesty of the female sex, or to insult them, or to do them an injury, every Magistrate may, with peculiar propriety, not only bind the offender over to appear at the next Sessions or Assizes, but in the mean time to be of good behaviour.

Besides libels written or printed, there may be libels still more injurious to religion, the government, or good morals, by prints, pictures, or other representations. The authors, or publishers, or exhibitors of these, may be treated by all Magistrates as the authors or publishers of irreligious, seditious, and immoral compositions.

Of that nature also is hanging, burning, or drowning in effigy; or any representation to disturb the quiet, or to corrupt the good principles of the Public, or to wound the feelings or to prejudice the characters of individuals.

A few years ago, a Gardener, in a village near London, hung up a figure in his garden, close to a public turnpike-road: it was intended to expose to derision the Minister of the parish. This gentleman had given no ground of offence, but by the faithful discharge of his duty as a Commissioner of the Income Tax.

The Commissioners of the Taxes instituted a prosecution against this silly Gardener; and when he was brought up for the judgment of the Court of King's Bench, the Clergyman, with great propriety, stated, that he forgave the man; that he did not conceive he had suffered any diminution of credit, and that he would be satisfied with the slightest punishment: but the Counsel for the Commissioners of Taxes urged the Court to inflict a severe punishment; suggesting, that although this gentleman might not be influenced by so ridiculous and indecent an exhibition, yet there might be persons acting as trustees for the public interest, who might be intimidated from the due discharge
of

of their duty, if they were thus to be exposed to scorn and contempt; and of that opinion was the Court of King's Bench, who fined the defendant 100*l.* and ordered him to be imprisoned one year, and till the fine was paid.

This is peculiarly a case, where the offender might with great propriety be bound to his good behaviour; and especially if the indecent exhibition were not immediately removed.

I have stated all the authorities I have found respecting libels, which prove, beyond all controversy, that the writer and publisher of a libel may not only be bound to appear at the next Assizes or Sessions, but may also be bound in the mean time to be of good behaviour; and, for want of sureties, he may be committed before any indictment is preferred.

And in the course of my investigation of the subject, the following is the only authority I have met with to the contrary: it is an anonymous Letter concerning libels, warrants, &c.; but it has been said to have been written by the late Mr. Dunning.

“ I cannot help adding, that pledges for good behaviour, in my apprehension, are not demandable by law, in the case of a libel, before conviction: for this misdemeanour is only a breach of the

peace by political construction ; nothing being an actual breach of the peace but an assault or battery, the doing or attempting to do some bodily hurt. The writers upon bail, or the delivery of a man's person from prison, never mention sureties for the behaviour in any case of a libel, or constructive breach of the peace ; and yet it would have been material for them so to have done, if such security cannot be given before a man could obtain his liberty. I never heard till very lately, that Attorney-Generals, upon the caption of a man supposed a libeller, could insist upon his giving securities for his good behaviour : it is a doctrine injurious to the freedom of every subject, derogatory from the old constitution, and a violent attack, if not an absolute breach, of the liberty of the press. It is not law : and I will not submit to it." p. 41.

If Mr. Dunning was the author of this Letter, or any other eminent character, it abundantly proves that no talent, or extent of general learning, will secure an author upon Law from falling into the most extraordinary errors, if he does not bestow much time and patience in the investigation of his subject before he sits down to write upon it.

The assertion of this writer is opposed by an irresistible phalanx of the highest concurring authorities, from the remotest time to the present day.

I ought,

I ought, perhaps, not to omit to mention, that I have perused a recent publication upon the subject, viz. "The Speech of Earl Grey in the House of Lords, May 12, 1817, on Lord Sidmouth's Circular." It is an elaborate legal argument; and the conclusion from it is, that Magistrates, neither for Libels nor for any other misdemeanour which is not a breach of the peace, can commit or bail before an indictment is preferred and found.

I always decline, as much as I can, to make any animadversions upon the productions of living authors; and it is my wish and endeavour to establish the truth of my own propositions, as if no contrary opinions had existed.

I will only observe upon that publication, that notwithstanding the display of learning, talent, and eloquence contained in that speech, and in all the speeches on both sides of the question, the consideration of binding over for the good behaviour, upon which, in my opinion, the whole depends, has been entirely overlooked.

In deciding upon such important subjects, we ought to proceed with the utmost caution; for both *dead and living authorities* may mislead us; more especially, if the living have viewed, and relied upon

upon, only one half of the dead authorities : for the noble and eloquent author has declared, that, “ In the investigation of this subject, I can assure your Lordships, that I have spared no pains before I ventured to pronounce so strong an opinion. I have had recourse to all the best sources of information within my reach, both of dead and living authority; and after a careful and diligent inquiry, I present myself to you this night with the strongest conviction of the soundness of the principles which I have asserted.” p. 85.

CHAP. IV.

MISDEMEANOURS, WHICH ARE NOT LIBELS OR
BREACHES OF THE PEACE, CONSIDERED.

It is quite clear, that for all assaults and misdemeanours committed by force, the offender may be bound to appear and answer what shall be objected at the next Sessions or Assizes, and in the mean time to keep the peace towards the King and all his subjects, and particularly to the person or persons who have been injured : so it is equally clear, that for Libels, and a great number of other Misdemeanours which are not committed with force and violence, the offenders may be committed, or held to bail, to the next Sessions or Assizes, and in the mean time to be of good behaviour.

This binding to keep the peace, or to be of good behaviour, in my opinion, gave the Justices of the Peace jurisdiction to commit or bail before trial ; because, in all other Misdemeanours, when the condition of the recognisance cannot be to keep the peace or to be of good behaviour, the law does not give any authority to commit or bail before trial. As in cases for nuisances, for not repairing
a high-

a high-way, for erecting a steam-engine, or for following some trade offensive or injurious to a neighbourhood, for refusing to accept an office, for misconduct in it, and for various other offences of that kind, if they are not accompanied by force or fraud, the party cannot be bound to keep the peace, nor to be of good behaviour; and therefore I am of opinion he cannot be committed or held to bail before an indictment is found against him.

It will, therefore, be very useful to Magistrates to ascertain in what cases they may apprehend by a warrant, and commit, or bail, or bind to the good behaviour, when they shall see occasion for it, before an indictment is preferred.

It will be generally, perhaps universally, true that where the Court can add it to the punishment that the offender shall find sureties for his good behaviour, he may be bound to his good behaviour before trial; except in the instances of Members of the two Houses of Parliament, who, as we have seen in Mr. Wilkes's case, may be bound after conviction, like other persons, to their good behaviour: but I should think, neither in libels, nor for any other Misdemeanour not a breach of the peace, can they be so bound before trial.

All

All blasphemous expressions against the Deity, our Saviour, the Holy Trinity, the Old or New Testament, or the Christian Religion, have always been an indictable crime, just as if the same words spoken had been written or printed; and the offender might be bound to his good behaviour, and by a repetition of the offence the recognisance would be forfeited*.

So

*. The only difference in these cases is, that the offence, by writing and publishing, is more deliberate than by words uttered, and the mischief is more permanent and extensive. Woolston, for blasphemous discourses on the Miracles of Christ, was fined 100*l.*; imprisoned one year; and ordered to enter into a recognisance for his good behaviour for life; himself in 3000*l.* and in 2000*l.* by others. *Str.* 824. 2 *Geo.* II.

Peter Annett pleaded guilty to an information for a blasphemous Paper, called the Free Inquirer.

This sentence was, imprisonment in Newgate for one month; to stand twice in the pillory with a paper on his forehead, inscribed 'Blasphemy'; to be sent to the House of Correction, and to be kept to hard labour for a year; to pay a fine of 6*s.* 8*d.*; and to find sureties for his good behaviour for life. 1 *Blackst. Rep.* 393. 3 *Geo.* III.

These cases might clearly have been tried at the Quarter Sessions: and surely every Magistrate, if a complaint had been made before him, would have thought himself bound to have committed the offender to the next Sessions or Assizes for want of bail; and he might, with great propriety, or indeed it would have been his duty, have required sureties that they should, in
the

So all seditious words uttered against the King or the Government have been held to be an indictable crime, and the offender might be bound to his good behaviour; and there is great reason that offenders of this description should be brought to punishment, to deter others from wantonly insulting their God or their King*.

It is a just sentiment of a profound historian, that mankind naturally hate those whom they have injured. *Proprium humani generis est, odisse quem læseris.* Tac.

So the progress, if not checked, from insult to hatred, and from hatred to insurrection and rebellion, would be rapid and inevitable. It is a wise Oriental proverb, that you may stop a fountain with a bodkin, which, if permitted to flow, will soon

the mean time, be of good behaviour to the King and to all his subjects. That not only would have prevented their escape, but would have restrained the further circulation and propagation of such horrid blasphemies by themselves.

* If any player, in the performance of any part upon the stage, shall make use of any profane words, he shall forfeit for every offence 10*l.* one half to the King, and one half to him who will sue for the same. 3 *Jac.* I. c. 21. This statute in that case, did not take away the punishment of the misdemeanour by the common law.

soon carry away a camel and its burden : and what Cicero says, in a beautiful simile, was true of the people of Rome, will always be equally true of the people of England, and probably of the people of every other country :—

“ Ex quo intelligi potuit id, quod sæpe dictum est ; ut mare, quod sua natura tranquillum sit, ventorum vi agitari atque turbari : sic et populum Romanum, sua sponte esse placatum, hominum seditiosorum vocibus, ut violentissimis tempestatibus, concitari.” Cic. pro Cluent.

From which we may understand, what has been frequently observed : As the ocean, which in its own nature is tranquil, becomes agitated and troubled by the violence of the winds ; so the people of Rome, of themselves quiet and peaceable, become enraged by the speeches of seditious men, as if they were driven by the most violent storms.

When Hawkins wrote his excellent book upon Criminal Law, it had not been decided, that the author of an obscene publication could be prosecuted in the Temporal Courts ; yet he says, he would have bound him over to his good behaviour, as a scandalous person of evil fame. *See ante, 27.*

It

It has not yet been decided, that a person could be indicted for obscene language: but where it was publicly used before females and children, I should not hesitate to treat the offender as if he had uttered blasphemies or seditious words; and, both as a Justice of Peace and as a Judge, I should hold it an indictable offence.

Of that nature, also, is the indecent exposure of the person.

The following Note I have inserted in Blackstone's Commentaries, which fully explains the law upon this subject.

“Many offences of the incontinent kind fall under the jurisdiction of the Ecclesiastical Court, and are appropriated to it. But, except those appropriated cases, the Court of King's Bench is the *custos morum* of the people, and has the superintendency of offences *contra bonos mores*. 3 Burr. 1438.

“In that Court, in the reign of Charles the Second, Sir Charles Sedley was indicted for exposing himself naked in a balcony in Covent Garden, and the Court declared it was the *custos morum* of all the king's subjects; and it was determined to punish such profane actions, which were so contrary to
good

good manners as well as to Christianity: but in consideration that he was a gentleman of a very antient family and his estate incumbered, and as it did not wish his ruin but his reformation, the judgment of the Court was only, that he should pay a fine of 2000 marks, be imprisoned a week, and bound to his good behaviour for three years.

1 *Sid.* 168. An information has been granted against a number of persons concerned in assigning a young girl as an apprentice to a gentleman under pretence of learning music, but for the purposes of prostitution. 3 *Burr.* 1438.

“ There is also an instance of an information for a conspiracy, against a Peer and several others, for enticing away a young lady from her father’s house, and procuring her seduction. The young lady was the sister of his wife. That circumstance was, undoubtedly, a great aggravation of the offence, yet its existence in the case was not necessary to give the Court cognisance of the prosecution. 3 *St. Tr.* 519. Indeed, incest cannot be punished in any degree, as an offence in the Temporal Courts. In a case where a husband had formerly assigned his wife over to another man, Lord Hardwicke directed a prosecution for that transaction, as being notoriously and grossly against public decency and good manners. 3 *Burr.* 1438. It is extraordinary that prosecutions are not instituted
against

against those who publicly sell their wives, and against those who buy them. Such a practice is shameful and scandalous in itself, and encourages other acts of criminality and wickedness.

“ It now prevails to a degree, that the punishment of some convicted of this offence, by exposing in the pillory, would afford a salutary example *.

“ All such acts of indecency and immorality are public misdemeanours; and the offenders may be punished, either by an information granted by the Court of King’s Bench, or by an indictment preferred before a Grand Jury at the Assizes or Quarter Sessions.”—4 *Bl. Comm.* 64.

So bathing in rivers or the sea, near to public roads or private habitations, is a misdemeanour of the same nature.—A few years ago, a man at Brighton bathed before the new houses erected on the Beach; and he insisted he had a right so to do, because he had bathed there before the houses were built: but the Chief Baron, M’Donald, and afterwards the Court of King’s Bench, when he was brought up for judgment, declared that it was an

* The punishment of the pillory, most unfortunately for the public justice and morality, in all such cases, has been abolished by the 46th *Geo. III.* c. 138. Men, but not women, may still be whipt for shameful misdemeanours.

an outrage against modesty and good manners, and was a clear violation of the Law of England. But as he had mistaken the law, and had not been guilty of any wanton indecency, they only required that he should enter into a recognisance to appear and receive the judgment of the Court whenever called upon ; so that, if he had repeated the offence, he might immediately, without further process, have been punished for his former act of bathing or exposing his naked person. *Rex v. Crunden*, 2 Camp. 82.

There may be cases where such a proceeding may, with great propriety, be adopted by the Justices at the Quarter Sessions. .

So keeping a brothel, or a bawdy-house, has always been an indictable crime, being not only a great nuisance to the neighbourhood, but an offence highly injurious to the morals of both sexes, and subversive of the good order of society. So all frequenters of such a house may be indicted ; and all the parties offending, in such a case, may be bound over not only to appear and answer to an indictment to be preferred against them, but in the mean time to be of good behaviour ; and for want of sureties may be committed either to the jail or house of correction.

That

That such persons may be bound to their good behaviour there is the highest authority, viz. that of Chief Justice Holt, a strenuous asserter of the liberty of the subject ; and the rest of the Court agreed with him.

Elizabeth Claxton was committed to the New Prison by Justice Perry, there to remain till she found security for her good behaviour, *for being taken in a disorderly house* ; and being brought up (before the Court of King's Bench), her Counsel moved for her discharge :—1st. Because that being taken in a disorderly house was no reason to require sureties of the good behaviour ; for that any honest person might accidentally be there, and know nothing of its being such a place, which was granted :—2dly. That in case a woman's being taken in a disorderly house be reason to take her for a lewd woman, and so within the jurisdiction of a Justice, by the 43d *Eliz.* ; yet the way was to send her to the house of correction, and not to require sureties of the good behaviour of her.

Chief Justice Holt.—“ It is not true to say, that every one that has not a visible way of living shall be liable to find sureties of the good behaviour. Indeed, if one lives extravagantly and high, who has no visible way of getting a livelihood, it may be reasonable to inquire how he lives ; but if
a man

a man lives in a reasonable quiet manner, it is hard to hold him to it. But lewd and disorderly persons may be held to their good behaviour; or committed to jail, or they may be sent to the house of correction. But what is it makes a lewd person? It is not being caught in an house of bawdry, or a disorderly house, at a seasonable time. And though a Justice of Peace may be a judge of who is a lewd and a disorderly person, and therefore if the commitment had laid, that it had appeared to him that this person was such, we would have taken his word for it; yet, when he assigns the reason of his judgment, and we find that reason will not maintain it, we are not to regard his judgment; and as persons of ill behaviour are to be punished, so great care is to be taken of the innocent."

And being remanded, and brought up again at another day, several affidavits were read of her lewdness; whereupon the Court quashed the Justice's commitment, and ordered a Rule to be drawn for her commitment to the Marshall;—thus :

"Because it appears to us, that she is a lewd woman, and a frequenter of bawdy-houses; therefore she is committed till she find sureties of good behaviour."

And Holt quoted 13 *Hen. VII.* 10. That Constables

stables may commit lewd women till they find sureties, and neighbours are bound to assist.—*Elizabeth Claxton's Case*, 12 *Mod.* 566.*

After stating this which is the clearest and highest authority, that persons may be committed for

* By the 25th *Geo. II. c. 36. sect. 5.* to encourage prosecutions against persons keeping bawdy-houses, gaming-houses, or other disorderly houses, any two inhabitants of the place paying scot and lot may give notice, in writing, to the constable, of such houses; and he shall go with them to a Justice of the Peace; and they shall swear before him, that they believe the contents of the notice to be true, and shall enter into a recognisance of 20*l.* each, to give material evidence against the offender.

The constable shall then enter into recognisance of 30*l.* that he will prosecute the indictment with effect at the next Assizes or Sessions, as to such Justice shall seem meet.

The constable shall be allowed his reasonable expenses, to be allowed by two Justices; and they shall be paid to him by the Overseers of the Parish. If the offender is convicted, the Overseer shall pay the inhabitants each 10*l.*, on pain of forfeiting double. If the constable neglects his duty, he shall forfeit 20*l.*

He or she who has the management of such a house shall be deemed the master or mistress of it.

In this case, the Statute expressly declares that the Justice shall, by a warrant, bring the person accused before him, and bind him to appear at the next Sessions or Assizes; and, if he thinks fit, may demand and take security for his good behaviour in the mean time. *Sect. 6.*

This he may clearly do when any one accuses or prosecutes by the common law, and though no one is bound over to prosecute.

for not finding sureties or bail to be of good behaviour, for offences which are not breaches of the peace; I think it proper to add, that, in a popular book of practice, much relied on by Magistrates, I was astonished to find a long argument to prove that Justices of the Peace ought not to bind over for the good behaviour for offences not connected with a breach of the peace;—I mean Dr. Burn's Justice of the Peace Law title, 'Surety for Good Behaviour.' The language seems different from his own. Who drew up these observations, and for what purpose, cannot now be discovered: but that they are perfectly erroneous, not only the last case, but a thousand others incontrovertibly prove.

Dr. Burn was an industrious man, and seems to have had a good notion of method; but he was quite unequal to give an opinion of his own, to be confided in, upon any point of law. Indeed he has been so unfortunate, that when he gives his own opinion, nine times out of ten he is in an error, though they are in cases in which his chance of being wrong was not greater than that of his being right.

Most of his original errors have been removed by Editors of his book, who possessed more learning than himself; but this egregious one still continues, as a reproach to his book, and a serious injury to his country.

Every attempt or solicitation to commit a felony without force, is a misdemeanour, for which every Justice of the Peace must commit for want of bail, and might also bind to be of good behaviour in the mean time.

An attempt to commit a rape is a misdemeanour, a violent breach of the peace; but it is a misdemeanour for which every Justice must arrest and bail in the same manner, if any one should solicit or attempt to gain, the consent, or, with her consent, attempt to violate a female child under ten years of age; this only differs from an attempt to commit a rape, in this, that in one case the offender may be bound to keep the peace, and in the other to be of good behaviour.

This will apply to every other solicitation or attempt to commit horrid crimes not accompanied by violence, or an assault upon another's person: in all such cases, Magistrates are not only bound to arrest and to commit; but, if they admit to bail, the bail ought not to be bound in common sums, but in so many hundreds or thousands, according to the condition of the party, as are likely to prevent the escape of the delinquent from public justice.

A man was observed, near a village in Hertfordshire, hiding something in a hedge: those who had seen him went to the place, and they found a bag containing

containing every species of implement for house-breaking ; it even contained poisoned liver to kill the dogs. It was carried before a neighbouring Magistrate, who very properly directed that it should be replaced in the hedge, and the spot should be watched. The man, who had concealed it there, soon afterwards came for it, and he was apprehended with it in his possession. The Magistrate very properly committed him to Hertford gaol ; but he escaped from prison before the Assizes.

Here was no breach of the peace ; but every Justice ought himself to have been indicted if he had set such an offender at liberty, declaring that he could have no cognisance of the case till an indictment had been found against him.

Indeed this is expressly declared in the preamble to the 23 *Geo. III. c. 88.* a statute particularly deserving the attention of all Magistrates :—

“ Whereas divers ill-disposed persons are frequently apprehended, having upon them implements for house-breaking or offensive weapons, or are found in or upon houses, warehouses, coach-houses, stables, or out-houses, areas of houses, inclosed yards or gardens belonging to houses, with intent to commit felonies ; and although their evil purposes

purposes are thereby manifested, the power of his Majesty's Justices of the Peace *to demand of them sureties for their good behaviour* hath not been of sufficient effect to prevent them from carrying their evil purposes into execution ;—

“ It is therefore enacted, that if any person shall be apprehended having upon him any picklock-key, crow, jack, bit, or other implement, with an intent feloniously to break and enter into any dwelling-house, warehouse, coach-house, stable, or outhouse, or shall have upon him any pistol, hanger, cutlas, bludgeon, or other offensive weapon, with intent feloniously to assault any person, or shall be found in or upon any dwelling-house, warehouse, coach-house, stable, or outhouse, or in any inclosed yard or garden, or area belonging to any house, with an intent to steal any goods or chattels, he shall be deemed a rogue and vagabond within the 17 Geo. II.

This Statute has not taken away the Common Law punishment; for every statute made in the affirmative, without any negative, does not take away the Common Law. 2 Inst. 200.

But a posterior statute abrogates a prior statute upon the same subject.

Every

Every Magistrate has therefore his choice, whether he will punish such an offender as a rogue and vagabond, under the Vagrant Acts, or commit him or admit him to bail, and bind him to his good behaviour to the next Sessions or Assizes.

If he is prosecuted there by indictment, the punishment may be far more severe than his punishment can be as a vagrant.

The preamble to this statute is the highest confirmation of all the law which I have ventured to advance in this publication.

The evidence before the Magistrate, and also before the Juries, in many of these cases, where the Magistrates must arrest, commit, or bind over to answer to an indictment to be preferred, or to appear at the Sessions or Assizes and abide the further order of the Court, will be either precisely the same, or nearly so, to a certain extent, as if the felony had been fully perpetrated.

Captain Donellan was found guilty of the murder of Sir Theodosius Boughton, by having changed a draught sent by an apothecary, into a deadly poison (Laurel Water), which was administered to him by his own mother. If the change of the medicine had been discovered before it had been administered, it would have been then, as it still

continues,

continues, only a misdemeanour by the Common Law. It is no breach of the peace. But every Magistrate must commit or bail, and must require bail according to the atrocity of the crime.

The circumstantial evidence to convict of the misdemeanour might have been the same, or nearly so, as to convict of the murder.

Some years ago, the following case of murder, by poison, occurred at the Assizes at York.

A farmer was possessed of a considerable sum of money, which he kept concealed in his house, and it was there stolen from him : he went to consult one, who in the North of England is called the *Cunning Man*, to be informed who had stolen his money. He did not obtain the information he wished ; but soon afterwards he received a letter, inclosing some pills ; and the letter declared, that if he would take these pills when he went to bed, and burn the letter, and a leaf also inclosed in it, and look out of his window at 12 o'clock at night, he would see the man who had stolen his money. This credulous man resolved to take the pills, though strongly dissuaded from it by his wife. The pills were very nauseous ; but he swallowed them, and died soon afterwards, in great agony. He omitted to burn the letter. A medical man swore that what adhered to the letter

letter and what was found on the stomach of the deceased was arsenic. A man was apprehended, tried, and convicted of the murder, and executed. The letter was proved to be his handwriting; and that was corroborated by a variety of other circumstances, so that no one could doubt of the prisoner's guilt. It was supposed he had stolen the money, and had adopted this measure to stop further inquiry.

If the foolish farmer had not taken the pills, the evidence before the Magistrate and the Grand and Petty Jury for the misdemeanour would have been precisely the same as for the murder.

The keepers of gaming-houses, or the frequenters of gaming-houses, may be arrested, committed, or bound over to appear at the Assizes, Sessions, or the King's Bench, and in the mean time to be of good behaviour, just like the publishers of libels, or the keepers or frequenters of brothels.

Or, they may in all such cases be bound to their good behaviour only.

The Magistrates in the neighbourhood of Brighton lately bound over the keepers of the Public Libraries not to permit the game of Loo to be played in their shops.

The

The authority of the proceeding has been doubted.

But I thought their conduct was perfectly correct; and I should have joined in it myself, if I had thought it prudent to suppress the practice, for the following reasons:—

They might have bound them over generally to their good behaviour.

They might have bound them over not to keep a gaming-house; so it was much greater kindness and lenity to bind them in a recognisance which could be forfeited by failure of one certain condition only, than by a recognisance which could have been forfeited by any one out of ten thousand offences.

For a recognisance to be of good behaviour will be forfeited by every offence which is a breach of the peace, and by every offence for which a delinquent can be bound to his good behaviour.

For all frauds and cheats the offenders may be committed, bailed, and bound to their good behaviour.

For uttering false and counterfeit money. This was a fraud and misdemeanour by the Common Law.

The

The 15th *Geo. II.* c. 28., as the statute clearly and expressly declares in the preamble, was only passed to fix the punishment; which being before in the discretion of the Courts, the offence had not been punished with sufficient severity.

Instead of the common law punishment of all misdemeanours of a base nature, by fine, imprisonment, and whipping, the statute enacts, that to utter or tender in payment any false or counterfeit money, knowing the same to be false and counterfeit, the punishment shall be six months' imprisonment, and to find sureties for his or her good behaviour for six months more.

For a second offence, the punishment shall be two years imprisonment, and to find sureties for their good behaviour for two years more.

For a third offence, he shall be guilty of felony, without benefit of clergy. Sect. 2.

If the offender on the same day, or within ten days, utter or tender in payment any more false or counterfeit money, knowing it to be counterfeit; or when he utters or tenders any counterfeit money, shall have in his custody one or more pieces of counterfeit money; he shall be deemed a common utterer, and shall suffer a year's imprisonment,

sonment, and find sureties for good behaviour for two years more.

After this conviction, the next offence of uttering or tendering becomes a capital crime. Sect. 3.

In the statute 15 *Geo.* II. c. 28, there is not one word respecting the commitment by the Magistrate. The cases which are misdemeanours now, were misdemeanours, as frauds, before the passing of the Act.

The power of the Justice of the Peace to commit, or admit to bail, is precisely the same as it was before the statute; and if he admits to bail, he might with great propriety add, that the party shall in the mean while be of good behaviour.

In the Charge, I have stated the case of the *King v. Heath*, which was a prosecution for procuring base and counterfeit money with intent to utter and to defraud the people of England, which received the approbation of the twelve Judges: that prosecution I advised Mr. Price, an active Magistrate at Birmingham, to persevere in; though at that time he was told by every other Barrister that he could not succeed in it.

There

There have been since several questions upon it, and some contradictory decisions at the Assizes: they are stated in print by the Solicitors to the Mint, in the briefs which they give to their Counsel in such prosecutions at the Assizes or the Quarter Sessions.

As there is some contradiction in the opinions of the Judges who have tried such cases, I will not state particularly whom I think in an error, but I will explain what I conceive to be the general principles upon the subject; which I trust all the present learned Judges will approve, and which the Justices both in and out of Sessions may safely adopt.

This is no species of breach of the peace, but it is a misdemeanour, for which every Magistrate is bound to commit, bail, or bind to the good behaviour.

Some time ago I ventured to lay down the following law in a note to *Blackstone's Commentaries*, 4th vol. p. 221, note 1.

“*Voluntas reputatur pro facto*,” or, “The will shall be considered as the deed,” is not true in felony, but it is still true both in treason and misdemeanour,

meanour, when it is manifested by a deed. Men cannot be punished by the law for the thoughts of the mind, however wicked they may be : even a resolution to commit high-treason, evidenced only by a confession, without any attempt to carry it into effect, is not punishable by the law of England. The principle of these cases is well illustrated by Lord Coke, who, after treating of single combats and affrays, says, “ If any subject challenge another to fight, this is also an offence, before any combat be performed, and punishable by law ; for *quando aliquid prohibetur, prohibetur et omne per quod devenitur ad illud*. 3 Inst. 158. And therefore he who carries the challenge, knowing that it is a challenge, is also guilty of a misdemeanour ; and he who designedly attempts to provoke another to fight, or to send a challenge, is guilty of the same offence.”

Some of the Judges have objected to *having in* their possession, with an intent to utter or to defraud. The objection I think good, or that it might be demurred to, or the judgment might be arrested, because a man might have in his possession with an intent to utter, and yet may not have committed a legal crime.

For if a constable, or any one, should become legally possessed of, or should legally have, base money,

money, and if he should wickedly resolve to make a bad use of the money, and should proclaim that resolution; yet, until he does some overt act to carry his wicked intent into effect, no misdemeanour is committed.

But if he should take a single piece for that purpose out of the box or bag in which it was; or if he move the whole; here is an act, and an intent, and a complete misdemeanour.

The indictment has stated, and generally now does state, that the defendant hath unlawfully, knowingly, and wickedly procured the counterfeit money, with intent to defraud, &c. Some of the Judges thought that evidence should be given to shew how and where he had procured it. But this is not now required, and the jury have only to consider whether he has done an act with a wicked intent, and whether that is properly stated in the indictment. To solicit, is to act; and if a constable should have bad money delivered to him, and he should solicit any one to take some, *lucri causâ*, for the sake of gain, he would be completely guilty of a misdemeanour. So, to bring it, to carry it, to handle it, to send it, with an intent to defraud, would all be perfect and complete misdemeanours.

I have

I have stated this thus particularly, that the Magistrates committing in private, or deciding at the Sessions, may act with full confidence upon the subject.

This is a Common-Law misdemeanour, and the punishment is, fine, imprisonment, and whipping, to the extent and limit that the Court, that is, the Court of King's Bench, the Judge at the Assizes, or the Justices at the Sessions, shall in their wisdom and discretion so think fit to inflict.

In all cases of obtaining money or goods (and by 52 *Geo. III.* c. 64. obtaining bonds, bills, or notes, or orders for the payment of money) the Magistrates may commit or bail before trial.

In the statute there is a remarkable acknowledgment of the power of the Justices upon the subject.

The 30th *Geo. II.* c. 24. s. 2. for obtaining money or goods by false pretences, expressly provides that every Justice shall deal with the person charged as he shall think meet, according to law; and if he commit him, or admit him, to bail, to answer the matter at the next Assizes or Sessions, then he shall bind over the prosecutor to appear also, and to prosecute with effect; and if the
money

money or goods fraudulently obtained shall exceed twenty pounds, then the recognisance to be taken from the prosecutor shall not be less than double the amount or value of the same.

This section was not introduced to give the Magistrates the power of committing, or admitting to bail, the offender; but of compelling the person grieved to prosecute: a power which, I think, they do not possess in the case of misdemeanours. And it directs the prosecutor to be bound over in twice the value of the goods of which he has been defrauded, if above 20*l*.

The object was to prevent the prosecutor from receiving private satisfaction, which in every case of a misdemeanour he may do without being guilty of a misdemeanour, which he is guilty of whenever he compounds a felony.

For obtaining money, goods, or notes, by a false pretence, the defendant, as in other cases of misdemeanours, cannot traverse, but must take his trial at the next Sessions or Assizes, at which he is bound to appear; unless the Court, for reasonable cause, shall put off the trial. 20th *Geo. III. c. 14. s. 17.* This is not generally known. It would be very desirable that this should be extended to all misdemeanours, but more

particularly to those which are committed against the government.

For this misdemeanour, of obtaining money, &c. by false pretences, the person convicted may be transported. The punishment of transportation has not yet been inflicted generally, either upon felonies or misdemeanours, and can never be resorted to by any Court, Assizes, or Sessions, but where there is an express Act of Parliament, introducing it for that particular felony or misdemeanour.

The punishment for this species of misdemeanour ought to be particularly attended to, viz. The Court shall order the offender to be fined and imprisoned, or to be put in the pillory, or publicly whipped, or to be transported for seven years, as the Court shall think fit. This is very clearly expressed.

There are several Acts of Parliament respecting the buyers and receivers of stolen goods, which must be all considered together, to obtain an accurate knowledge of the subject in every particular case: but they are greatly simplified by the 22d *Geo. III. c. 58. s. 1.*, which enacts, that every person who buys or receives any stolen goods, knowing them to be stolen, except they are lead, iron, copper, brass, bell-metal, or solder

solder, in every case shall be guilty of a misdemeanour, except where the person committing the felony shall have been convicted of grand larceny, or of some greater offence. In that case, the receiver is guilty of felony, and may be transported for fourteen years.

The statutes have not taken notice of the commitment of the Justice. But in every case, except where the principal is committed for grand larceny, or burglary, robbery, or a capital crime, the receiver must be committed, or admitted to bail, as for a misdemeanour.

It is a frequent practice, when the receiver has seduced the principal, as a servant, or a child, to steal and bring the stolen goods to him, to prosecute only the receiver.

The principal may be admitted a witness against him; so also if the principal has been convicted of petty larceny, even after judgment: but in both these cases the witness is swearing with the infamy of an accomplice, and his evidence ought to be corroborated by some material fact, proved by an unexceptionable witness.

Whenever the principal is convicted of grand larceny, the buyer or receiver must be tried only

for a felony : if the principal felon received the judgment of the Court, and had suffered the execution of it, by burning in the hand, a fine, whipping, or transportation, then, in like manner, he might be a witness against the receiver. This mode of proceeding I have not known in practice.

The former cases are very common.

The reason for the exception in this statute, with respect to lead, iron, copper, &c. probably was this, that they could easily be melted, or changed by fire ; the receivers of them, it should seem, may be prosecuted for a felony, though the principal felon has not been convicted, and *shall be* transported for fourteen years, by the 29th Geo. II. c. 30. s. 1.

But there is some inconsistency in this ; because the 22d Geo. III. has clearly repealed the 10th Geo. III. c. 48, which made a similar provision for jewels and gold and silver plate.

Very few of the statutes upon the criminal law are drawn with that accuracy which the importance of the subject requires.

The common law punishment of every misdemeanour of a base nature was, and is, fine, imprisonment,

sonment, and whipping, at the discretion of the Court ; or a portion of one, two, or all of these, as the Court shall direct : but the 22d Geo. III. declares, that the punishment of the misdemeanour under that statute shall be *fine and imprisonment, or whipping*.

These words are very ambiguously combined—all three ought not to be joined. It is doubtful whether a fine can be added to whipping ; but the fair construction seems to be, that imprisonment ought not to be joined with whipping, any further than it may be necessary to give effect to the whipping, as upon the next day, or the next market-day.

I have stated these distinctions for the benefit of Justices at the Sessions, who now every where try grand larceny ; they may therefore, in every instance, try the receiver either for misdemeanour or felony, except where the principal felon has committed a capital crime.

Justices may commit, or admit to bail, and, if they think it necessary, bind to their good behaviour all who are proved to be guilty of any species of conspiracy. Of that crime there is an infinite variety ; but every species of it is of a base clandestine nature.

It

It may be useful to particularize a few instances of conspiracy.

All confederacies or combinations to commit murder, or any felony, or any misdemeanour*.

Combinations by parish-officers to get a pauper girl married to a man of another parish.

Combinations to procure a woman to swear a bastard child to an innocent man.

Combinations to make a riot at a playhouse.

Combinations to seduce a woman.

Combinations to injure the credit of a banker, by collecting his notes to carry them in; or by so abusing them as to render them unfit to be circulated or re-issued.

A combination to injure a character by making an

* An extraordinary conspiracy to commit murder was tried before Sir James Mackintosh, when he was Recorder at Bombay. The sentence passed on the offenders was five years' imprisonment; during which period they are to be annually exposed in the pillory, twice publickly whipped through the bazar, and each to pay a fine of 10,000 rupees; and to be further imprisoned till the said fine be paid.— See *Christian's Vindication of the Criminal Law from the Imputation of Cruelty*, p. 57.

an innocent person suspected of the commission of a crime.

The case of the Cock-Lane Ghost I shall transcribe fully from Sir William Blackstone's Reports, because it contains an important point of law, which has been acted upon ever since; and because the whole might have been tried at the Quarter Sessions; and the same punishments might then have been, and may now be, except the pillory, which is unfortunately abolished, except for perjury, and subornation of perjury, inflicted upon the defendants.

"The defendants were convicted on an information for a conspiracy to take away the character of one Kempe, and accuse him of murder, by pretended conversations and communication with a ghost, that conversed by knocking and scratching, in a place called Cock Lane. When they were brought up for judgment, Lord Mansfield, who tried the information, declared, that he had directed the Jury that there was no occasion to prove the actual fact of conspiring, and should be glad to know the opinion of his brethren whether he was right in such direction. *Quod nemo negavit.*" *The King v. Parsons and Others.* 1 *Black. Rep.* 392.

In

In that case, the defendants received judgment; viz. Richard Parsons (the father of the child, who was the principal agent in the pretended communication with a spirit by supernatural noises, impossible in themselves to be interpreted, unless previously contrived and directed) to stand thrice in the pillory, and to be imprisoned two years; Elizabeth Parsons, the mother, to be imprisoned for one year; and Mary Frazer, a servant, who was aiding and assisting, to be sent to the House of Correction to hard labour for six months. Moore, the Curate of the parish, and one James, who were found guilty at the trial, were discharged on paying the prosecutor 300*l.* and his costs, which amounted to near as much more. Browne, who had published a Narrative, and one Say, the printer of a Newspaper, had previously made their peace with the prosecutor. *Ibid* 402. Anno 1762.

That the Sessions have jurisdiction in the case of all conspiracies, appears in the same volume from which I copied the last case.—Lord Mansfield declared that conspiracies tended to a breach of the peace as much as cheats and libels; and the Sessions had jurisdiction of them, though, for particular reasons, they could not try forgery, perjury, or usury. *The King v. Rispal.* 1 *Black. Rep.* 368.

So

So all combinations of workmen or journeymen to raise their wages is a conspiracy.

This may be punished in a summary way by any two Justices of the Peace, by imprisonment in the County Jail for three months, or by imprisonment and hard labour in the House of Correction for two months, by 40 *Geo. III. c. 106.*

But this statute has not taken away the Common-Law prosecution for a misdemeanour; and if any one will undertake to prosecute, they may commit, or admit to bail, to the Sessions or the Assizes; and they might, with the greatest propriety, bind the offenders, in the mean time, to be of good behaviour.

Five men and women were indicted at the Hertford Assizes, Summer 1819, for a conspiracy to defraud the Parish Officers of Watton by a forged route pass, pretending to be the wife and children of discharged soldiers. The prosecution was undertaken by the War Office. Some were imprisoned a year, and some, being children, three months.

Every wandering pass, except one granted to a soldier or sailor, according to the 43d *Geo. III. c. 62.*; or a route pass granted to their wives and children, according to the 52d *Geo. III. c. 92.*,
where

where the Overseers can receive back the money advanced from the Collector of Excise, is perfectly void and illegal. In a route-pass the expense falls where it ought, upon the Government, or the kingdom at large.

But where an illegal and void piece of paper is given by a Justice of the Peace and the Overseers of a township to a man, his wife and children, recommending them to wander through the country with it; and beg their way; and this done to save the expense of a regular order of removal, which would fall upon the township where the Justice and Overseers are rated to the poor; no professional man can hesitate for a moment in saying that they all are guilty of a shameful, dishonest conspiracy, and deserving of very severe punishment.—See this illegal and dishonourable practice fully explained and exposed in the subsequent part of this publication, under Vagrants.

So also all who steal dead bodies, though for the purpose of dissection and the improvement of surgery, are guilty of a misdemeanour, and may be bound to their good behaviour.

This is an act highly injurious to the feelings of the friends and relations of the deceased.

All bribery, or attempts to bribe, are misdemeanours, for which the offenders might be committed,

mitted, admitted to bail, or be bound to their good behaviour.

A promise to give an elector a sum of money, if he will vote for a certain candidate, though not paid, or the elector is not influenced by it, is a misdemeanour. *The King v. Plympton.* 2 *Lord Ray*, 1377.

So an offer to give the Duke of Grafton, who was then a Cabinet Minister and a Privy Councillor, 5000*l.* if he would procure a place for his son, was held to be a misdemeanour. *The King v. Vaughan.* 4 *Burr.* 2494.

All the Judges have held that it is a misdemeanour by the Common Law to sell unwholesome provisions, injurious to health, and not fit for the use of man.

This was first held in the case of a contractor with Government to supply French prisoners with food, (*Rex v. Treve. East's Pleas of the Crown*, 81. 1796); but it must extend to every person, a butcher, brewer, milk-woman, or any one who sells human food, and who sells knowingly what is injurious to health, for his own gain or malice to others.

So it has since been held by the Court of King's Bench, that a baker was guilty of a misdemeanour, who knowingly put alum into bread to be used by the children at the Royal Military Asylum at Chelsea. *The King v. John Dixon. Mau and Selw. 11. 1814.*

The knowledge that it is unwholesome is necessary to constitute this offence; for *mens rea facit reum*, the guilty mind makes the criminal: with that it is a fraud of the most shameful nature and of the most alarming consequences.

Lord Hale, in his *Pleas of the Crown*, has said, that if a man infected with any contagious disease, as the plague, pestilential fever, or small-pox, goes abroad, he is guilty of a *great misdemeanour*: 1. Vol. 432.

A woman was prosecuted for carrying her child into the open street, whilst it was in the small-pox, it having been inoculated. The Court of King's Bench ordered her to be imprisoned for three calendar months. *The King v. Vantandillo. 4 Mau and Selw. 73. 1815.*

It appeared, in that case, the defendant was the mother of the child a year old, which she had inoculated, and had taken out into a street in which

which there was a school, and that two of the children had caught the disorder and died.

A surgeon was also prosecuted for causing children inoculated to be brought through the public streets to his house, where he superintended them and prescribed for them.

In these cases it was not held a public offence to inoculate children, but to carry them through the public streets or roads, by which the infection might be communicated to others. Where death ensues from such careless conduct, I think every Judge would be bound to declare, that the offender, especially if he or she had been admonished of the danger, would be guilty of manslaughter.

Lord Hale has justly called this offence a great misdemeanour; and the persons who are guilty of this species of misdemeanour are so regardless of the health, happiness, and lives of others, that I should not hesitate a moment to commit them; and if they were admitted to bail, when I thought it prudent, I should bind them also to their good behaviour, because this would be the most effectual way to prevent a repetition of so dreadful an offence.

To

To compound a felony is a misdemeanour, for which the offender may be committed, or may be so bound.

Vaughan, an attorney, took 200*l.* to set a man at liberty who was apprehended by a Judge's warrant for a forgery: he was prosecuted for a misdemeanour, and fined 500*l.*, and imprisoned six months, and till the fine was paid. *Rex v. Vaughan.*
1 *Wilson*, 22.

But it is no offence to compound a misdemeanour; and in most cases, where a party is injured, he may obtain a satisfaction in damages for the injury he has sustained.

Chief Justice Wilmot and the Court of Common Pleas held that an agreement with a prosecutor not to prosecute an indictment for perjury was a corrupt agreement; and that a promissory note by a third person given to the prosecutor for that person was illegal and void; and that the bond by the parties prosecuted, given to indemnify him who had given such promissory note, was null and void by the Common Law, as it corrupted and impeded the course of public justice. *Collins v. Blantern, C. B.* 2 *Wilson*, 341.

If

If Magistrates commit a party wrongfully for a misdemeanour, it has been held that it is no bar to an action by him against them that they have consented that the complainant should not proceed in the prosecution against the party they committed. *Edgcombe v. Rodd.* 5 *East*, 294.—But from what fell from the Judges, in that case, they seemed to think that a fair and reasonable satisfaction for the injury sustained by a misdemeanour is a good consideration for an agreement not to prosecute; and that it is a legal contract, if it is made by the party grieved, and not by a stranger.

In all misdemeanours, the principle of universal justice seems to prevail, viz. that retribution may be made to the party injured, and that the offender may be also publicly punished to prevent the commission of such offences in future.

The person injured, in all cases, may sue for a satisfaction without commencing any public prosecution; and in cases of indictable fraud, he has his remedy both in a Court of Equity and a Court of Law.

The Master of the Rolls in such a case, in 1723, declared, “It is no objection that the parties have their remedy at law, and may bring an action
for

for moneys had and received for the plaintiff's own use; for in cases of fraud, the Court of Equity has a concurrent jurisdiction with the Common Law, matter of fraud being the great subject of relief here. *Colt v. Woollaston.* 2 *Pere Williams*, 153.

Satisfaction therefore, in all cases, may be received in bar to the suit in Equity or the action at Law.

But I should be inclined to think an agreement in every case not to commence a criminal prosecution, or to abandon one commenced, would be held to be void, as clearly injurious to the interests of the community, by obstructing the course of the administration of public justice.

When a man is bound by recognisance to prosecute for a misdemeanour, and he receives a satisfaction, his recognisance must be discharged by leave of the Court to which it was returned.

But no one can be compelled to enter into such a recognisance; and it is not a misdemeanour, though the agreement may be void, or money may be recovered back for agreeing or receiving money not to prosecute a misdemeanour.

Trespass is never merged in misdemeanour.

‘Trespass is merged in felony,’ is a maxim founded in general principles of policy; that is, it is considered for the general benefit of the country, that, in all crimes amounting to felony, no satisfaction shall be received by the party injured, till a public example has been made of the person who has been guilty of the crime.

But when that has been effectuated by his trial, then the person injured may receive or recover satisfaction or retribution, as in the cases of misdemeanour.

The law upon this subject is not known, as the importance of it requires: I will therefore state the following case, in which it was fully established, after two arguments, in the Court of King’s Bench.

Coveneigh was indicted for felony, for breaking the house and taking 250*l.* out of the house of Dawkes, and found guilty, and was burnt in the hand; and afterwards Dawkes brings an action of trespass *quare clausum fregit*, and for carrying away the 250*l.* against Coveneigh, who pleads not guilty. A special verdict was found to that effect.

It was twice argued whether the action would lie.

It was argued,—“The great inconvenience which might come to the common-wealth; if the action should lie, doth countervail the damage that may accrue to the party, if the action lie not. And it matters not that it is said the trespass is a distinct offence from the felony; for it is drowned in the felony; and therefore the party can have no satisfaction for it.

Roll, Chief Justice :—“This is after a conviction; and so here is no fear that the felon shall not be tried. And there is no inconvenience if the action do lie; and since he could not have had his remedy before, he shall not now lose it; and now there is no danger of compounding for the wrong.”

The rest of the Judges agreed with *Roll*, and so judgment was given for the plaintiff. *Dawkes v. Coveleigh*, *Style* 346.

No costs can be allowed in a prosecution for a misdemeanour: it would therefore be very hard to compel a poor person, who has suffered greatly by a misdemeanour, to incur a much greater loss by a public prosecution, in which no Court whatever can make him any allowance.

It

It is the practice for Magistrates to bind over parties to prosecute in cases of misdemeanour; but I can find no authority that they can compel them to do it by commitment, as in the case of felony. The practice has begun, and is continued by the consent of the prosecutor. The Magistrates having told the prosecutor that they would not commit, or admit to bail, or bind him to keep the peace, or be of good behaviour, unless the person complaining would enter into a recognisance to prosecute*.

Lord Hale has declared, "That previous to the commitment of felons, a Justice of the Peace must take information of the prosecutor, or witnesses, in writing, upon oath, and return or certify them at the next Sessions of the Peace or Gaol Delivery; and these being upon the trial sworn to be truly taken by the Justice, or his clerk, &c. may be given in evidence against the prisoner, if the witnesses be dead, or not able to travel."—
1 *Hale, P.C.* 586.

And they may be read if the witness is kept away

* This probably has been encouraged by the Clerks to Justices, who have a fee of 3s. for the recognisance of the party to prosecute, and the same for another recognisance that the witnesses shall appear and give evidence. In this recognisance it is the practice to include four witnesses.

away by the procurement or contrivance of the prisoner. *Philip's Evid.* 296.

But this applies by the statute only to felonies. The depositions never can be read in the case of misdemeanours, if the parties die: in that case they are like any other hearsay.

This was held in a trial at bar before Lord Holt and the Court of King's Bench. *Rex. v. Payne*, 1 *Lord Raym.* 729.

Lord Hale has also said, that "before a Justice of the Peace commit the prisoner, he is to take surety of the prosecutor to prefer his bill of indictment at the next Gaol Delivery, or Sessions, and to give evidence; but if he be not the accuser, but an unconcerned party that can testify, the Justice may bind him over to give evidence; and, upon refusal in either case, may commit the refuser to gaol. *Stamf. P. C.* 163. *Dalt. c.* 116. 2 and 3 *Philip & Mary*, c. 10. *Dalt. c.* 20. 1 *Hale, P. C.* 586.

All this applies to felonies by the statute of Philip and Mary; but neither any statute or writer upon the Common Law says that this can be done in the case of misdemeanours.

In misdemeanours, neither the refuser to prosecute, nor the refuser to give evidence before the Grand Jury, can in any way be punished.

When an indictment is found, and issue is joined, the witnesses may be compelled to attend by a subpoena.

I trust I have abundantly proved, that in every case in which a Justice of Peace can commit before an indictment found, or admit to bail, he formerly bound to keep the peace, or to be of good behaviour; so in all these cases, when a complaint is made to a Magistrate, and sufficient evidence is laid before him that the party has been guilty of any of the crimes which I have enumerated, and there is no one willing or able to undertake the prosecution, every Magistrate may commit him, or admit him to bail, to appear at the next Sessions and Assizes to answer all that shall be objected against him, or any indictment which shall be preferred against him; and in the mean time to be of good behaviour.

If any indictment shall be preferred, he is there to plead to it; if not, he is so far discharged.

This

This is a jurisdiction which may be exercised by the Justices in every county with the most salutary effects, in the preservation of the peace, quiet, and good morals of all ranks; and more especially amongst the lower ranks, where the parties injured are not of sufficient ability to prosecute those who in their cases have violated the laws of their country*.

The Magistrates in these cases are in no greater danger of an action for a malicious prosecution, than if both parties were bound. They will take down the evidence upon oath, and desire the witnesses to sign their deposition; and it would be advisable that their clerk should read them over to the witnesses, and ask them if all is true. These depositions will be carried to the Sessions or Assizes, to which the defendant is committed, or bound, to assist the Bench in case an indictment is found.

It

* Upon every occasion, I have recommended Associations of the opulent, for the prosecution of felons, and persons guilty of misdemeanours.

In many cases, these Associations are confined to crimes committed only against the persons and property of the subscribers only; but they will be more beneficial both to the public and to the subscribers also, if the funds are applied to the prosecution of many offences committed in the neighbourhood of the subscribers, which would escape with impunity if they did not afford assistance.

It has rarely happened that any thing valuable in our Law and Constitution has been lost by disuse.

What I have advanced is the result of much consideration, and a diligent investigation of the subject; and I certainly recommend it to all Magistrates as law, which they may safely act upon and adopt in an infinity of instances for the public good*.

The practice of the law often changes gradually and unaccountably.

This seems to have been a favourite observation of Lord Bacon, who not only has declared that time is the greatest innovator; *Tempus maximus innovator est*; but in another part of his works has said, "The truth is, that time seemeth to be of the nature of a river or stream, which carrieth down to us that which is light and blown up, and sinketh and drowneth that which is weighty and solid." *Lord Bacon on the Advancement of Learning.*

* Though this is not conformable to the general practice of Magistrates at present, yet I humbly submit it to the consideration of the most learned men in the profession of the Law, as founded in, and supported by, the best principles and rules of the Law of England; and I zealously recommend it to the adoption of all Justices as an object of infinite utility for the suppression of crimes.

I have

I have been assured, by the best authority, that a Magistrate in the County of Kent ventured to commit a man for a misdemeanour, without binding over any one to prosecute; and by that official act he incurred the censure of all the other Justices of the county. I can assure that gentleman, I frequently do it myself; and I trust that all the Justices throughout England will soon follow our example.

CHAP. V.

HOW, AND HOW LONG, JUSTICES MAY BIND TO
KEEP THE PEACE, OR TO BE OF GOOD BEHA-
VIOUR.

IT may be very useful to Magistrates to know how, and for what period, they may compel persons to find surety to keep the peace, or to be of good behaviour.

The following case, lately adjudged by the Court of King's Bench, will give ample and correct information upon the subject:—

Trespass for Assault and False Imprisonment.
Plea, Not guilty.—This cause was tried at the Spring Assizes, 1817, for the county of Sussex, before Mr. Serjeant Bosanquet.

It appeared in evidence, that the plaintiff, a gentleman farming his own estate at Lancing, in that county, was brought before the defendant, a Justice of the Peace, acting in and for that county, by virtue of a warrant under the hand and seal of the defendant, directed to the High Constable of Brightford, in the said county, granted on

on the information and complaint upon oath of James Martin Lloyd, Esquire, in order to the plaintiff's finding surety towards the King and all his subjects, and in particular towards James Martin Lloyd. That on hearing the complaint, the defendant required the plaintiff to find surety for keeping the peace for two years, himself in 500*l.* and two sureties in 250*l.* each. That the plaintiff then offered to enter into the security required of him for 500*l.* and had one surety ready to join him in the sum required, namely, 250*l.*; but not being provided with a second surety in that sum, he was, on the 2d day of October, committed to the custody of the High Constable by another warrant, signed by the defendant, to the tenor and effect following:—

“Sussex to wit.—To the Constable of the Hundred of Brightford, in the said county; and to the Keeper of the House of Correction at Petworth, in the said county.

“Whereas William Willes, of Lancing, in the said county, yeoman, is now brought before me, Henry Bridger, Esq. one of the Justices of our Lord the King, assigned to keep the peace in and for the said county, requiring him to find sufficient sureties to be bound with him in a recognisance for his keeping the peace towards our said Lord the King, and all his liege people; and especially

cially towards James Martin Lloyd, of Lancing, Esq. one other of the Justices of our Lord the King, assigned to keep the peace in and for the said county: And whereas the said William Willes hath refused, and doth now refuse, to find such sureties, before me: These are, therefore, in the name of our said Lord the King, to command you, the said Constable, forthwith to convey the said William Willes to the House of Correction at Petworth, in the said county, and to deliver him to the Keeper thereof, together with this precept: And I do, in the name of our said Lord the King, hereby command you, the said Keeper, to receive the said William Willes into your custody, in the said House of Correction; and him there safely to keep for the space of two years, unless he shall in the mean time find such sureties as aforesaid, for his keeping the peace towards our said Lord the King, and all his liege people, and especially towards the said James Martin Lloyd, for the space of two years from the date hereof."

On the following day, the plaintiff having been conveyed in custody as aforesaid to Arundel, in the same county, on the way to the said House of Correction at Petworth, was admitted to bail by several Justices of the Peace for the said county, and entered into a recognisance before the said Justices, according to the exigency of the said warrant,

warrant, himself in 500*l.* and two sureties in 250*l.* each respectively, for keeping the peace towards the King and all his liege people, and especially towards the said James Martin Lloyd, for the space of two years from the date of the said warrant.—The jury found a verdict for the plaintiff for 40*s.*; the learned Judge reserving for the opinion of this Court the legality of the warrant under which the plaintiff was committed.

Upon motion, this Court ordered that a case should be stated for their opinion upon two points: first, whether the warrant of commitment was legal; and, secondly, whether the action would lie against the defendant, being a Justice of the Peace, under the circumstances above stated.

After the case had been fully argued by Counsel, the Court of King's Bench took time to consider their judgment, which was afterwards delivered by Chief Justice Abbott; and the Court were unanimously of opinion that the commitment by the defendant was good.

It is too long to transcribe here, but I will copy part of the conclusion of it:—

“ It may, in some cases, be expedient that the time and amount of the security should be settled by the concurrent sentiments of several persons,
rather

rather than by the single opinion of one individual; and, therefore, we would be by no means understood to disapprove of the usual practice, which is, to take the surety until the next Sessions only. On the other hand, expense and trouble are saved by an adjustment of the whole matter in the first instance; and therefore there may be other cases in which this may be the most convenient course. The present case, however, does not turn upon any question of convenience or expedience, but simply upon the power of the Justice, and the legality of the warrant. For the reasons given, we, who heard the argument, are of opinion, that the warrant is legal, and therefore the *postea* must be delivered to the defendant. Judgment for the defendant. *Willis v. Bridger*, 2 Barn. & Ald. 278. 1818.

The circumstances which induced Mr. Bridger, the Magistrate, to bind Willes for two years to keep the peace, are not stated in the case. It appears only from the commitment that it was for misconduct to another Justice of the Peace. If it was for assaulting or threatening a Justice of the Peace for any thing done in the administration of justice, I should recommend every Justice to do the same, or to go to a greater extent.

It does not at all affect any prosecution to be
com-

commenced at any time in the King's Bench, Assizes, or at the Sessions.

So such a binding would be extremely proper, if the Magistrate had evidence that a duel was likely to take place between two gentlemen; and in that case it would be proper to add also in the recognisance, as Lord Ellenborough did, that they should keep the peace, not only in England, but in every other part of the world.

There may be other cases, as public boxing-matches in a county, where one Justice or more might with great propriety, and benefit to the public, require a recognisance to keep the peace for a period of that duration. In the argument of this case, it seemed to be agreed by the Counsel, that in cases which were not breaches of the peace, and where the Justices had a power to commit, any one Justice or more had the power of compelling a *malefactor* to find sureties for his *good behaviour*, for the same period as in this case, to keep the peace.

It may be exercised with good effect by Magistrates in the cases of sedition, blasphemous and obscene speeches and publications, where there is no one who is willing to undertake the expense of a prosecution at the next Sessions or Assizes.

CHAP. VI.

VAGRANTS.

THIS is a subject of infinite importance to the country. Idleness, crimes, and diseases, are propagated and disseminated widely by this class of men. Though the attention of both Houses of Parliament has long been bestowed upon the Poor Laws, yet no improvement whatever has been made in the Vagrant Laws, except, if it may be called an improvement, that paupers born in Scotland or Ireland, and who have gained no settlement in England, may be removed to Scotland or Ireland by a vagrant pass, without having any punishment inflicted upon them; by 59 *Geo. III.* c. 12., whenever they are chargeable to a parish.

My attention was particularly drawn to this important subject from a number of accidental circumstances, which are stated in the charge and in the sequel.

The following Letter was written to a gentleman at the head of one of the Police Offices in London, and I was much astonished that it produced no effect whatever. I was, in consequence,
advised

advised to send it to the Courier Newspaper, in which it was immediately inserted. It then produced a considerable sensation throughout the kingdom. I received the thanks of several Magistrates, for giving them information which they did not before possess; and of others, for a confirmation of what they before knew, but what they could not induce their brother Magistrates to believe.

“ Field-Court, Gray’s Inn,

“ Nov. 5th, 1816.

“ SIR,

“ MY attention has lately, by an accident, been called to a subject which first introduced me to the honour of your acquaintance, more than twenty-four years ago. You will remember that Sir Christopher Willoughby, a very honourable and zealous Magistrate for the county of Oxford, and who was long Chairman of the Quarter Sessions, by a circular letter, requested the attendance of two Magistrates, in London, from every county in England and Wales.

“ They assembled at the St. Alban’s Tavern: it was during the sitting of Parliament; and a more honourable Meeting was never, upon any occasion, convened for public business. The greatest part were either Members of the House of Lords, or Members of the House of Commons: you were

one

one of the few Magistrates who were not of that description ; and perhaps you will recollect that I was retained to attend you as an assistant Barrister.

“ The superior information you then possessed upon all the duties of a Magistrate has always convinced me of the singular propriety with which you have been chosen to fill your present honourable and arduous station.

“ After discussing a great variety of subjects, the Meeting came to a resolution that a Bill should be brought in to restrain the abuses which then existed, in respect to the removal of Paupers and Vagrants. I was desired to draw the Bill pursuant to your Resolutions ; and, in consequence, an Act of Parliament was passed ; viz. the 32d Geo. III. c. 45.

“ The grievances then complained of were, that the Justices of the City of London and Middlesex never removed Paupers by a regular order of removal, but sent them to their respective parishes by a Vagrant Pass, though these Paupers had committed no act of vagrancy, and were not, in any degree, subject to the statute concerning Vagrants.

“ The consequences were, that they were not supported upon their journey by the removing parish, but were to be maintained by each county through which they were conveyed ; and the

parish to which they were sent had no power to appeal, but if they wished to try the right of the Pauper's settlement with any parish in London, they were obliged to be at the expense of sending them all the way back by a regular order of removal.

“The practice was then not only directly contrary to Law, but was pregnant with those great inconveniences, besides many others, which it is unnecessary to enumerate to you. To prevent this being done in future, it was expressly enacted, that no Magistrate should ever order a Vagrant to be conveyed by a Vagrant Pass, till he either had been whipped or imprisoned at least seven days. A person who is to be treated as a Vagrant is a criminal, who has done some act specified in the statute for which he is to be punished as a rogue and vagabond. And it was thought no Justice of the Peace would dare to punish any of his Majesty's subjects, by whipping or imprisonment, who had not actually committed some crime deserving of such punishment: if he did, he would be subject to legal animadversion, both criminally and civilly. But notwithstanding that Act of Parliament, drawn by myself, under your immediate direction and superintendence, I have lately discovered that the evil now exists probably far beyond what it did twenty-four years ago.

“A few

"A few days since, as I was returning home to the village near which my family generally reside in the country, in Hertfordshire, I was called to by a Nobleman of the neighbourhood, requesting that I would give him some legal assistance. He had collected around him a very interesting group—a sailor, his wife, and two children, dressed clean and neat; the Constable of the village was also one. The poor sailor was making a pitiable complaint, that he had obtained a Pass from a Justice of the Peace in London, (producing it, with the seal and signature of the Justice,) which had promised him relief from London to Halifax in Yorkshire; and the first place that he had applied for assistance, the Constable would only give him sixpence, for himself, his wife, and two children.

"The Constable, who is a very creditable man, and, I find since, is well acquainted with his duty, persisted that he was not bound to give any thing; that if he gave more, it would not be allowed by the county; and if the poor family could not pass on with that to the next town or village, they must all be committed and punished as rogues and vagabonds.

"The sailor told his tale in so artless and plaintive a manner, and his case appeared so deplorable, that we made a collection of a few shillings, which would support them for a day or two,

and then their difficulties would recommence. I looked at the Pass in a cursory manner, and I naturally concluded that some change had been made in the system since you and I had met upon the subject; but, a day or two afterwards, I attended the Sessions at Hertford, when almost the first Magistrate I met, one who acts for the Hatfield Division, began anxiously to inquire what could be done with the numerous Vagrants, who came down the great North Road with Walking Passes, signed by the London Justices; that the numbers had increased prodigiously within the last few weeks; and that Hatfield being the first town out of Middlesex, they all made application there for assistance; that he, and the Magistrates with whom he acted, found them the greatest possible public nuisance. I assured him, that all such Passes were perfectly illegal; that every Magistrate who signed them subjected himself to a criminal prosecution; that I should make a representation of the case to you; and by your communications with the other London Magistrates, I was sure the abuse altogether, or in a great degree, would be suppressed. I have inquired of the Constable of the village near which I reside when I am in the country, whether any are signed by you: he declares he never saw one signed by yourself, but many come from all the Public Police-Offices. I have asked also whether any were signed by the

Lord

Lord Mayor : he said, when the present Mayor came into office, he used to see some signed Matthew Wood, Mayor, but for several months he had not seen any with that signature.

“ From this it may be concluded that his Lordship’s attention to the duties of his high office has led him to discover that the practice was illegal. But it has been so common, and is so still in the City of London, that blank illegal Passes are printed with the City Arms at the top, and the word *Mayor* printed at the bottom, above which it was intended the Mayor should write his name : when they are signed by one of the Sitting Aldermen, that word is cancelled.

“ A great variety of these illegal blank Passes are publickly sold for the Country Magistrates, at two-pence each. I have had the curiosity to purchase some at that price, but was not allowed to take fewer than three of one sort. There is one form correct, and is that, and that only, which every Magistrate ought to use.

“ There is great reason to think that most of these illegal Walking Passes are forgeries, and that those who sign them falsely with the name of a Magistrate know very well that the crime is not of a higher nature than that of the Magistrate who actually signs them with his own name ; for both are misdemeanours by the Common Law.

“ I am sure, Sir, that by your representations to
the

the other Magistrates in London and Middlesex, this horrible nuisance will be put an end to.

" I need not state to you the infinite variety of evils which result from it.

" The wandering, uncontrolled Vagrants procure a subsistence in a manner the most burthensome and injurious to every county; they disseminate every crime and species of wickedness: and I am confidently of opinion, that the tumults and riots in different parts of the kingdom are greatly instigated and augmented, both by their presence, and by the communications which, by the designing enemies of their country, they are employed to convey.

" I have the honour to be,

" SIR,

" With great respect,

" Your obedient humble Servant,

" ED. CHRISTIAN."

After that Letter was published, many Paupers were sent through the country with wandering Passes, signed by the Justices at the Police Offices, and by many other Justices, particularly those who were resident near London.

Having begun to act as a Magistrate myself, when I am in the country, I took the wandering Passes from the poor persons who brought them,
and

and sent them back with a request that the Magistrates signing them would not sign any more such; and stated, that I had punished the bearers of them as Vagrants.

Though a Vagrant who is sent forward with a Pass (except, now, Scotch and Irish Vagrants), must be whipped or sent to the House of Correction for a week at the least, yet he is afterwards conveyed in a cart, and is provided with adequate subsistence.

I have been informed that the Gentleman to whom the above Letter was written disputed my law upon the subject; because the Paupers who had these wandering Passes applied only to Overseers of the Poor for relief, and especially in the cases of the casual poor, or those who have gained no settlements in England.

Where a man has been some time residing, whether he has gained a settlement or no settlement, if he becomes destitute, and wants relief, he must certainly apply to the Parish Officers of the place where he has been resident; and it is their duty to relieve him, or to remove him home to his place of settlement by a regular order of removal. But if he himself resolves to travel from parish to parish, or township to township,
and

and beg only of Parish Officers, he is in all respects as much a Vagrant as if he begged of every other individual. And he is not less a Vagrant, though a more venial one, if he has been advised to do this by ignorant or designing Parish Officers or Justices of the Peace.

The paper they bring with them is a perfect nullity, and might as well be signed by the Justice's groom or his housemaid.

And where the Parish Officers and the Justices combine, in this practice, to throw the expense of an order of removal from their own estates upon the rest of the world, regardless who they may be, they are guilty of a shameful legal conspiracy, and are deserving of a very severe punishment.

I have been informed that a Gentleman in one of the districts in Westminster procured himself to be named in the Commission of the Peace merely to have an opportunity of granting such Passes. I hope he is convinced of his error, or the impropriety of his conduct. If he continues in this practice, measures of a serious nature ought to be resorted to, to stop it.

The Constable of the Hamlet near which I reside when I am in the country was directed to
write

write the following Letter to the Magistrates who had granted such illegal passes :—

“ SIR,

“ Hoddesdon, ———.

“ In consequence of a man calling himself _____ applying to me for relief, and producing, at the same time, a paper under your hand and seal, which he says was granted to him by you or your Clerk as a Vagrant Pass, I am directed by the Gentlemen of this Hamlet to request that you will not grant to any person a Pass which is not conformable to the statute 32 *Geo. III.* c. 45.; because they are advised that all other Passes are perfectly illegal, and they are certainly productive of great inconvenience and great injustice to this Hamlet.

“ I am, SIR,

“ Your obedient humble Servant,

Constable for the Hamlet of Hoddesdon.

These Passes have frequently been granted to persons who were going, not to their place of settlement, but were going merely to visit their friends. Some men and women were surprised, who were going to visit their relations at Norwich, Hull, &c., that I was obliged to send them to the House of Correction, and then to pass them to their places of settlement at Liverpool, Plymouth, &c.,

A Magistrate

A Magistrate in the Isle of Ely sent me a Pass, which he had taken from a man who had driven cattle up to London, had purchased the Pass there, and had made more money as a Vagrant than as a Drover.

These kind of permits to beg are illegally granted by the Provost and Magistrates of Edinburgh and of Glasgow, and by the Trinity House at Leith. Their papers with their seal of office are perfectly illegal; and every person begging with them, though of Parish Officers only, may be treated in every respect as a Vagrant, and may now be sent back by a regular Vagrant Pass, without being sent to the House of Correction.

I directed the Constable to send a polite Letter to the Provost and Magistrates of Edinburgh, requesting to be informed by what authority they granted such Passes. They returned a polite answer, that they had done it from time immemorial. I shewed it to Lord Ellenborough, who was much amused with the pretence of a prescription against an English Act of Parliament. All these certificates or recommendations being equally inefficacious as the wandering Pass of a Justice of the Peace in England, it would be very desirable that the persons travelling with them should be sent
back

back as soon as they enter Cumberland or North-
umberland.

Lord Ellenborough, upon that occasion, also expressed his decided opinion, that persons who travelled through the country with papers which were mere nullities in point of law, were just as much Vagrants, though they applied for relief of Parish Officers only, as if they begged of all the rest of the world. To induce Justices of the Peace to act with more confidence upon it, I will take the liberty to say, that that consummate lawyer, both by a written note and in conversation, declared his perfect approbation of all the law advanced in the preceding Charge.

I was very sorry to see that some Societies in the country for the Suppression of Mendicity and Vagrancy grant such papers. It is highly unwarrantable in those whose object it is to suppress Vagrancy, that they, in a most illegal manner, should be accomplices in it: but when they are better informed, it is hoped that all such illegal recommendations will be avoided.

Lately a Mendicant applied at my gate, and presented a paper from a Consul resident at one of our great sea-ports, with a seal impressed with the arms of his kingdom or empire.

I shall

I shall give a copy of the Certificate, but shall leave blank the Consul's name, and the country by which he was appointed, and the place at which he is resident.

" ——— Consulate,

" ——— 28th Sept. 1819.

" THIS is to certify, that Nicholas Topping is a native of ———, and is now on his road to London, to endeavour to return home by a ship from thence, and, as such, is free from molestation, on his behaving himself peaceably and quietly on his journey.

" Given under my hand and seal, this 28th day of September, 1819.

" A. B.

" Vice Consul of ———,

" at ———."

I thought it my duty to write to the Vice Consul the following Letter:—

" SIR,

" Yesterday a man came to ask relief of me, and presented a Certificate from you. I beg leave to inform you, that no Consul or Ambassador can give a protection to any of his countrymen who are guilty of a violation of the Law of England; and that every person, Englishman or Foreigner, who wanders abroad and begs
for

for relief, is liable to be punished under the statutes to prevent Vagrancy.

"I therefore request that you will not again give such a Certificate to any of your countrymen; because if I find any one begging with it, I must be obliged to do my duty as a Magistrate, by punishing him as a Vagrant.

"I have the honour to be,

"SIR,

"Your obedient humble Servant,

"ED. CHRISTIAN."

"To A. B. Esq.

"Vice Consul of —."

I have stated this subject with such particularity, because I think it of great importance to the country, and because I have found few Magistrates who have sufficient confidence to act as they wish upon the subject, and as the public interest requires. Many such Passes and Certificates as I have described are forged; but whether forged or authentic, they are all equally inefficacious; and the persons possessed of them, seeking relief from Parish Officers, or others, are all equally rogues and vagabonds.

CHAP. VII.

AN ABRIDGMENT OF THE EXISTING VAGRANT
STATUTES, WITH OBSERVATIONS.

THIS important branch of the Poor Laws is much more intricate than a Student or a Magistrate would expect, before he sat down with a resolution to have a full and comprehensive knowledge of it. To assist him in obtaining that knowledge, I will abridge each section of the existing Statutes, and subjoin my own observations in explanation of it.

The first existing Act of Parliament upon this subject, is the 17th *Geo. II.* c. 5. intituled, “An Act to amend and make more effectual the Laws relating to Rogues, Vagabonds, and other idle and disorderly persons, and to Houses of Correction.”

The present Vagrant Act in the preamble states, that the number of rogues, vagabonds, beggars, and other idle and disorderly persons, daily increases, to the great scandal and annoyance of the kingdom : it therefore first provides
for

for the suppression and punishment of those who shall be *deemed idle and disorderly persons*, who are thus described :—

1. Who threaten to run away, and leave their wives or children to the parish.

2. All persons who shall unlawfully return after an order of removal by two Justices, without bringing a certificate from their parish.

3. All persons who cannot maintain themselves, live idle without employment, and refuse to work for the usual wages.

4. All persons who beg, or gather alms at the houses, or in the streets, or highways, in their own parish ; all these may be committed by any Justice, being convicted upon his own view, or by their confession, or by the oath of one witness, to the House of Correction, to be kept to hard labour for one month, or any less time.

Any person may apprehend idle and disorderly persons of the last description ; and the Justice shall order the overseer of the place to pay the sum of five shillings for every such idle and disorderly person so apprehended*.

The

* The words are, '*shall and may be lawful*,' which are used throughout this statute. These are imperative upon the Justice, and leave him no choice or discretion.

The Overseer shall be allowed the sum he pays, upon producing the Justice's order, and the receipt of the person receiving it, in his account. But if he refuses to pay it, the Justice, on oath thereof, by warrant under his hand and seal, shall order the same to be levied by distress upon the goods of the Overseer, and in such case it shall not be allowed in the Overseer's account.

OBSERVATION.—There is no reward for the apprehension of the three first offenders; but the Justice must proceed against them in the usual manner, by an information, summons, and warrant by a Constable. The reward for begging within the parish falls upon the parish.

The statute, then, in the second section, proceeds to describe who shall be deemed rogues and vagabonds:

1. All persons who go about as patent gatherers, or gatherers of alms, under pretence of loss by fire, or other casualty*.
2. Persons who go about as collectors for prisons, jails, or hospitals.

3. All

* It is very common in the country for persons to go about with petitions, an account of losses; but it is clearly contrary to law. Ladies and Gentlemen may make a collection among themselves for a distressed object, but he or she ought not to be permitted to collect charity by a petition.

3. All stage-players, or who play or perform for a reward any part of any entertainment of the stage not authorized by law*.

4. All fencers and bear-wards.

It may be doubted whether boxers are included under the word 'fencers.'

I should think that the word fencers would only include those who use foils and cudgels.

But boxers might, upon the complaint of any one, be brought before a Magistrate by his warrant, and might be bound to keep the peace.

5. All minstrels.—This will comprehend all wandering musicians and ballad-singers.

6. All

* The Justices of the Peace, in their General or Quarter Sessions, at their discretion, may grant a licence to any person making an application, by petition, for the performance of any plays or farces which are performed in the licensed theatres in the City of Westminster, for any time not exceeding sixty days, to commence within six months; and the place not to be within twenty miles of London, Westminster, or Edinburgh; or ten miles of the residence of his Majesty, or within fourteen miles of the Universities of Oxford and Cambridge: and such licence not to be granted within eight months of a former licence. 28 Geo. III. c. 30.

It is very common for players and others to apply to a single Magistrate for leave to exhibit their performances: he has no authority whatever; and if he were to give leave, he would find himself in a distressing dilemma, if he was called upon by any informer to convict the party as a Vagrant.

6. All persons pretending to be gypsies, or wandering in the habit of Egyptians*.

7. Pretending by any means to tell fortunes†.

8. Using any subtile craft to deceive his Majesty's subjects.

9. Playing or betting at any unlawful games.

10. All persons who run away and leave their wives and children chargeable to the parish.

11. All petty chapmen or pedlars wandering abroad, not being licensed‡.

12. All

* By the 5th *Eliz.* c. 20. it was made a capital crime for Egyptians to remain one month in this country, or if any one of the age of fourteen joined their company for that time. This statute was repealed by the 23d *Geo.* III. c. 51. This last statute was perfectly unnecessary; for it was effectually repealed by this statute, which had reduced the crime to an act of Vagrancy.

Much has been said of the cruelty of the statute of *Elizabeth*; but there might have been a good reason for it at that time. But the humanity of those who brought in a Bill to repeal it was founded in great ignorance; for, with respect to acts of Parliament, the law of the Twelve Tables of Rome universally applies; viz. *posteriores leges priores abrogant*.

† When money is obtained by telling fortunes, it is common to prosecute the offender for obtaining money by a false pretence.

‡ This may now be extended, with the greatest possible benefit

12. All persons wandering abroad, and lodging in ale-houses, barns, out-houses, or in the open air, and not giving a good account of themselves.

13. All persons wandering abroad and begging.

SECT. III. makes exceptions in favour of soldiers and sailors with certificates, as therein described ; and of persons going to seek work in the harvest with a certificate, as therein described.

OBSERVATION. — By the 32d *Geo. III. c. 45.*
s. 7. the exception in favour of soldiers and sailors
is

benefit to the country, to all itinerant venders of blasphemous, seditious, and wicked publications.

Religion and Morality must be the pillars of every Government.

The enemies of the English Constitution have now formed a horrid combination to destroy both.

To counteract their base designs, I should earnestly recommend to all Magistrates to order the Constables to apprehend every person who is travelling and selling any printed books or papers, not stamped as newspapers or almanacks, &c.

In every case, he or she is a Vagrant, and may be treated as such ; and where the publications are of a mischievous nature, I should particularly advise also, that the Vagrant should be committed till the next Sessions, when the Justices may commit the Vagrant for six months longer ; and in case of a male Vagrant, may punish also by whipping, as the case may require.

The enforcement of this indisputable law will greatly, if not completely suppress this species of dissemination of abominable Libels.

is repealed. It was thought disgraceful both to them and the country, that they should be permitted to wander and beg; and, from the terror they might create, a licence to beg was like a licence to rob. See the exception to this by the 43d *Geo. III. c. 61. post.*

But a man who goes abroad to work in the time of harvest, with a certificate from the Minister and one of the Churchwardens or Overseers of the parish or place where he inhabits, declaring that he has a dwelling-house there, cannot be punished for begging.

Incorrigible Rogues.

SECT. IV. describes who shall be incorrigible rogues; viz.

1. All end-gatherers, who shall offend against 13th *Geo. I. c. 23.*

This is an offence not now known.

2. All rogues and vagabonds who escape from the persons apprehending them, or who refuse to go before a Justice of the Peace; or who refuse to be conveyed by a legal pass; or who give a false account of themselves before a Justice of the Peace, being warned of their punishment; or who break out of the House of Correction; or who, after being punished as rogues and vagabonds, shall again commit a similar offence.

SECT. V.

SECT. V.—Any person whatever may apprehend the offenders against this act : if a Constable shall refuse or neglect to use his best endeavours to apprehend or convey to a Justice of the Peace, or any other person ordered by a Justice of the Peace, he shall forfeit 10s. ; and if any person shall apprehend any such rogue or vagabond, and shall deliver him to a Constable, or shall convey him, or cause him to be conveyed, to a Justice of the Peace, it shall and may be lawful for such Justice to reward him, by making an order upon the High or Chief Constable to pay him 10s. within one week after demand, and producing such order, and giving a receipt for the same.

The High Constable shall receive it again from the Treasurer of the County, upon passing his accounts ; and the Justices at the General or Quarter Sessions shall allow it in the Treasurer's accounts.

OBSERVATION.—It is imperative upon the Justice to order the reward of 10s. The words throughout this act are, *that it shall and may be lawful*, which in every case are clearly imperative. The word '*may*' empowers, and the word '*shall*' commands.

This section provides, that in cities, boroughs, and towns-corporate, where there are no high or Chief Constables, the Petty Constable, or other officer,

officer, shall pay such reward, or retain it if due to himself, and shall be allowed it in passing their respective accounts, upon producing the like vouchers.

If the High Constable, or the Petty Constable, in a town-corporate, shall refuse to pay, the Justice may order 20s. to be levied; and such person to be paid the reward of 10s., and so much more for his trouble, loss of time, and expenses, as he shall think fit; the surplus to be returned to the officer upon demand.

OBSERVATION.—From this last clause, it is quite clear that the full reward of 10s. is to be allowed by the Justice of the Peace, in every case, for the apprehension of a rogue and vagabond; and it is also clear that the Justices in corporate towns must, in all cases, make the same.

The Justice of the Peace is not to order the reward to be paid till the Vagrant has been punished, and until the examination has been transmitted to the Sessions, that is, delivered to the Clerk of the Peace.

But the Justice may order the reward at any time after the offender is sent to prison.

Privy Search; when, and how made.

SECT. VI.—The Justices of the Peace for every county, riding, town-corporate, or division, or any

two of them, shall four times in every year at the least, by their warrant, command the Constables, who shall be assisted with sufficient men, to make a privy search, in one night, throughout their several limits, for the finding and apprehending rogues and vagabonds.

And any one Justice of the Peace, upon receiving information that rogues and vagabonds are within his jurisdiction, may issue such a warrant.

The rogues and vagabonds they shall find upon such a search, they shall cause to be brought before any Justice of the Peace.

OBSERVATION.—This is seldom or never done: indeed, if wandering Vagrants are treated with severity, it would not be necessary.

Rogues and Vagabonds, how to be punished.

SECT. VII.—The Justice must examine each rogue and vagabond, upon his oath, respecting his place of settlement. The substance of the examination shall be put in writing; the Vagrant shall sign it, and also the Justice of the Peace, who shall transmit it to the next General or Quarter Sessions; and he shall order him to be publicly whipped by the Constable, or some person appointed by the Constable; or he may order the Vagrant to be sent to the House of Correction, to remain there till the next Sessions, or for any
less

less time; and after such whipping or imprisonment, such Justice may, if he think it convenient, order such person to be conveyed to his last place of settlement, there to be delivered to some Churchwarden or Overseer of such parish or place.

If Vagrants, under fourteen years of age, have a father or mother living, they may be conveyed to their place of abode.

OBSERVATION.—The Justice of the Peace need not, unless he think it necessary, order the Vagrant to be passed to his place of settlement. If he is committed till the next Sessions, then he must be passed by some of the Justices at the Sessions, or by an order of the Sessions. But the Justice who has committed him to the next Sessions need not be one of them.

The commitment under the Vagrant Act, in every instance, whether for a limited time or until the next Sessions, is a commitment in execution, and not a commitment for a further trial, even when it is till the next Sessions. The commitment must therefore state that the person 'has been convicted before me:' if it states only that 'he has been *charged* before me,' the party will be set at liberty by a *Habeas Corpus*. *The King v. Rhodes*. 4 Term Rep. 220.

The

The Form of the Pass is given in this Section.

[See the Form in the *Appendix*.]

SECT. VIII. provides, that if the Justice orders the Vagrant to be passed to his place of settlement, he shall make two Passes and two examinations, and shall transmit one Pass and examination to the next Sessions; and one Pass, and examination annexed, shall be sent with the Vagrant: and these duplicates may be read as evidence in any Court of Record.

OBSERVATION.—If the Justice of the Peace does not order the Vagrant to be passed to his place of settlement, he need only make one examination, and send it to the next Sessions; that is, he may leave it, or order it to be left, at any time, with the Clerk of the Peace for that purpose.

Power of Justices at the Sessions.

SECT. IX.—The Justices at the Sessions shall examine the Vagrants in custody, and shall, on examination of the circumstances of the case, adjudge each to be a rogue and vagabond, or an incorrigible rogue; and may, if they think proper, order a rogue and vagabond to be kept in the House of Correction to hard labour for any further time not exceeding six months; and an incorrigible rogue for any further time not exceeding two years,

years, nor less than six months; and may order each of them to be whipped as they shall think proper; and may, if they think proper, send them away by a Pass, *mutatis mutandis*, charging what is necessary, as may be done by one Justice.

If such Vagrant is above twelve years of age, the Justices at the Sessions may send him to serve his Majesty either by sea or land.

Felony.

If an incorrigible rogue, ordered to be detained in the House of Correction, make his escape, or shall offend again in like manner, he shall be guilty of felony, and shall be transported for any time not exceeding seven years.

OBSERVATION.—‘*In like manner*’ may mean, in like manner as a rogue and vagabond, or in like manner as an incorrigible rogue; but the second offence, in most cases, will make the offender an incorrigible rogue; therefore the Act which would have made him an incorrigible rogue, will, when he has been once convicted as an incorrigible rogue, make him a felon. But where a person must be punished for a second or third offence, the conviction of the first and the second offence ought to be transmitted to the Sessions and duly recorded.

Under this Section it is, in some degree, ambiguously

guously expressed whether the Justices at the Sessions could whip a rogue and vagabond like an incorrigible rogue; but in the case of the *King v. Patchet, 5 East.* the Court of King's Bench held that the words, '*shall order during his confinement to be whipped in such manner, and at such times and place as they shall think fit,*' applied both to rogues and vagabonds, and to incorrigible rogues.

In the same case, it was decided that if the Sessions adjudged that the Vagrant shall be sent into his Majesty's service by sea or land, they must specify which service. For want of such specification in that case, the judgment was reversed, and the Vagrant discharged.

SECT. X.—The Justice or Justices of the Peace making the Pass shall give a written note or certificate, to the Constable or other officer appointed to convey them, how they are to be conveyed, by a horse, a cart, or on foot, and the allowance he is to have, according to the allowances appointed by the Justices at their Sessions.

SECT. XI.—The Constable or other officer who shall receive such Pass, shall convey, or cause to be conveyed, in the manner and within the time as the Pass shall direct, to the place where the Vagrant shall be sent, if within the same county.

But if the place is within another county, he shall
deliver

deliver the Vagrant to the Constable of the first town or parish in the next county, in the direct way to the place to which the Vagrant is to be conveyed, with the Pass and the duplicate of examination, and shall take his receipt for the same.

And the Constable of that county shall immediately apply to some Justice of that county, who shall make a similar note or certificate how the Vagrant shall be conveyed, and deliver it to the Constable who shall convey the Vagrant to the first parish in the next county, and so in like manner till they come to the place to which the Vagrant is sent ; and the Constable shall deliver the Vagrant to the Churchwarden, or other person ordered to receive him, with the Pass and examination, and shall take his receipt for the same ; and if the Churchwarden or Overseer shall think the examination to be false, he may take him before a Justice of the Peace, who, if he thinks it proper, may commit him to the House of Correction till the next Quarter Sessions ; and the Justices there, if they see cause, may deal with him as an incorrigible rogue.

But the Vagrant so sent can only be sent back by an order of removal signed by two Justices.

OBSERVATION.—I am afraid there are great abuses in the neglect of the provisions of this statute.

statute. But it is clear that the Vagrant can only be sent back by a regular order of removal.

SECT. XII.—The Justice of the Peace may order a Vagrant to be searched; and if he has money or property, he may order the property to be sold, and the money in his possession, or arising from the sale of his property, to be applied towards the expense of taking up and passing such Vagrant; and the surplus shall be returned to such Vagrant.

OBSERVATION.—If he shall have sufficient to carry him where he pretends to be going, the Justice may order him to be whipped, or to be imprisoned and to be kept to hard labour, without ordering him to be conveyed by a Pass.

In every case he need not, unless he thinks it proper to send him by a Pass.

Vagrants belonging to Scotland, how to be treated.

SECT. XIII.—If a Vagrant has no settlement in England, but has been born in Scotland, then he must be conveyed, as before, into Cumberland, Northumberland, Durham, or town of Berwick upon Tweed; and the Constable for these counties, or place, shall take the Vagrant, as before, and shall deliver the examination to the Clerk of the Peace for these counties, to be kept amongst
the

the Records of the Sessions; but he shall take the Vagrant and the Pass into the next shire in Scotland, and deliver the Vagrant to some Constable or other officer of the next parish within the next shire; and such officer is required to receive such person, and give a receipt: And if such Vagrant is found wandering, and committing any other act as a rogue and vagabond, he shall be punished as an incorrigible rogue.

OBSERVATION.—The provisions of this Section are probably seldom carried into full effect.

SECT. XIV.—The preamble states, that Vagrants have been conveyed from county to county, to be sent to Ireland, the Isle of Man, Jersey, Guernsey, or Scilly, their last legal settlement; but for want of authority to compel masters of ships to take them, they may be very chargeable to the maritime counties where they may lie for exportation.

It then provides that every master of a ship shall be bound to convey them, upon a warrant from a Justice of the Peace, at such a rate as the Justices of the Peace at their Quarter Sessions shall appoint.

If a master of a ship refuses to receive on board such Vagrant, he shall forfeit 5*l.* to the use of the poor, to be levied by distress.

SECT.

SECT. XV.—No master of a vessel shall be compelled to take on board more than one Vagrant for every twenty tons burthen.

OBSERVATION.—Such Vagrants from the inland counties must be passed as to Scotland; and the Justices at the maritime counties or sea-ports must provide for their conveyance by sea.

By 59 *Geo. III.* c. 12. (an Act passed this Sessions), All persons who may be passed to Scotland, Ireland, and the Isles of Man, Jersey, and Guernsey, under the two last Sections, may be sent by a Pass, if they are chargeable, though they have committed no act of vagrancy; and if they have committed an act of vagrancy, they may be conveyed by a Pass, without any punishment, by whipping or imprisonment, if the Justice thinks proper, as in the case of all other Vagrants conveyed by a Pass.

OBSERVATION.—This, I think, is a great improvement in the Poor Laws. It will teach the Poor in Ireland and Scotland to seek for employment at home, where there is a much greater proportion of uncultivated land; and when they were permitted to wander into England, and were entitled to relief as casual poor, they overloaded many parishes, already oppressed by those who had gained regular settlements.

The

The only hardship seems to consist in sending a poor wretch to his native country when he is unable to support himself there.

SECT. XVI.—Justices of the Peace, at their Sessions, may direct what allowance per mile, or otherwise, shall be made for conveying Vagrants; and may make such further orders upon the subject as they shall think proper.

SECT. XVII.—The High Constable shall allow the Petty Constable what allowance shall be contained in a certificate from any Justice of the Peace, together with the receipt, or note, from any Constable to whom the Vagrant was delivered; and he shall be allowed the same by the Treasurer of the county; and the Justices shall allow the same to the Treasurer.

If the High Constable refuse to pay, double the sum shall be levied upon him by distress, out of which the Petty Constable shall be paid what is ascertained by the certificate.

Petty Constables in towns corporate may retain.

If a Master of a House of Correction shall deliver such certificate to the Treasurer of the county, he shall pay it.

SECT. XVIII.—If any Petty Constable, or Master of the House of Correction, shall counterfeit or alter
any

any such certificate, or note, or receipt, he shall forfeit 50*l.*; and in case he shall not convey, or cause to be conveyed, the Vagrants, or shall refuse to receive them, or deliver them to a proper person, he shall forfeit the sum of 20*l.*

Overseers of the Place where he is sent to employ him.

SECT. XIX.—The place to which a Vagrant is sent shall employ him in the workhouse till he can get employment; and if he refuses to work, the Overseers may carry him before a Justice of the Peace, who may commit him to the House of Correction to be kept to hard labour.

OBSERVATION.—If they refuse to take the person sent, or neglect to find him employment, they are clearly subject to a penalty of 5*l.* each, by Sect. XXII.

SECT. XX.—Two Justices may order dangerous Lunatics who go abroad to be securely confined.

SECT. XXI.—But this not to take away the jurisdiction of the Chancellor, or to prevent their relations or friends from taking care of them.

SECT. XXII.—If any Constable, master of the House of Correction, shall be negligent in his duty, in any case not before provided for, or any person

shall disturb the execution of this Act, or shall rescue any person apprehended, or advise or assist an escape, he shall forfeit any sum not exceeding 5*l.* nor less than 10*s.* to the use of the poor of the parish where the offence is committed, upon conviction before a Justice of the Peace where such offence shall be committed, to be levied by distress of his goods; and if sufficient distress cannot be found, he shall be committed to the House of Correction, to be kept to hard labour for any time not exceeding two months.

OBSERVATION.—This is a very important Section, and deserving of the particular attention of the Magistrates; for the penalty may be levied upon every person by whose privity, advice, or assistance, a Vagrant is set at liberty.

Sheltering Vagrants.

SECT. XXIII.—If any person shall knowingly permit any rogue, vagabond, or incorrigible rogue, to take shelter in his house, barn, or outhouse, shall forfeit any sum not exceeding 40*s.* nor less than 10*s.*, one-half to the informer, and one-half to the poor, to be levied by distress; and he shall be answerable also for any charge to be brought upon any parish; and if sufficient distress cannot be found, he may be committed to the House of Correction for any time not exceeding one month;

OBSERVATION.

OBSERVATION.—If the person who thus shelters Vagrants is an alehouse-keeper, the Justices may admonish him, and threaten to take away his license.

Children committed with a Vagrant.

SECT. XXIV.—If a child above seven years of age is committed with a Vagrant, the Justices at the Quarter Sessions, if they think proper, may order such child to be placed out as a servant or apprentice till he attain the age of twenty-one, or less time, to any person willing to take such child within their jurisdiction; and if any offender, who was found with the child, shall be again found with it, he shall be an incorrigible rogue.

Appeal to the Sessions.

SECT. XXVI.—Persons aggrieved may appeal to the next Sessions of the county, giving reasonable notice, whose order shall be final.

OBSERVATION.—By Sect. II. the Vagrant shall not be sent back but by a regular order of removal by two Justices.

It has been decided that no appeal lies upon the Pass with respect to the settlement of the Vagrant. *The King v. Ringwould. Burr. Sett. Cases, 840.*

See the *King v. St. Lawrence Jewry, London*: the case of a foreigner sent by a false examination. *Cald. Cas.* 18.

If the Magistrate has reasonable notice of an appeal to the Sessions, which would be what the Sessions have laid down as reasonable in other cases (probably eight days), within that time the Justice of the Peace ought to transmit to the Sessions a regular conviction. This is never mentioned in this or any Statute upon the subject, but it is implied in the word *appeal*.

It is not necessary to send a conviction to the Sessions, but in cases where there is an appeal, or where there is expected a conviction upon a former conviction. It is an unnecessary expense of 5s. to the Justice's Clerk.

SECT. XXVII.—This Statute is not to alter any special Local Acts upon the subject. A Bedell or a Constable, in London, to convey and deliver Vagrants in the next county, as directed by this Act.

Casual Poor, how to be treated as Vagrants.

SECT. XXVIII.—Where Vagrants have been committed to the next Sessions, and their settlement cannot then be found, the Justices shall order them to be employed in the House of Correction until they can provide for themselves, or
until

until the Justices can place them out as servants, apprentices, soldiers, or sailors.

OBSERVATION.—This is a very important Section, and deserving of the attention of the Justices:—all who have no settlement ought to be supported at the county expense. Such casual poor, when committed till the next Sessions, ought to be supported in any workhouse at the expense of the county. Notwithstanding all the attention that has been paid by both the Houses of Parliament, no provision whatever has been made for the casual poor.

Such poor are Vagrants if they go into another parish to ask relief; and when they have become Vagrants, under this Section they ought to be provided for by the county in which they have been punished. All wandering beggars now declare they have been born in America, East or West Indies, &c. to avoid being passed to Scotland, Ireland, or to their place of settlement in England. This can only be remedied by a rigorous execution of the Vagrant Laws;—that is, by committing them constantly till the next Sessions, and to be kept to hard labour in the House of Correction; and by the Justices at the Sessions afterwards ordering them to be kept to labour in the House of Correction, or in some workhouse, at the county expense, until they can provide for themselves.

This

This is the only mode of checking the number of travelling beggars, who now set a Vagrant Pass at defiance; and this also is the most equitable mode of supporting casual poor, who cannot provide for themselves.

No one to be passed who is not a Vagrant, and punished as such.

The 32 Geo. III. c. 45. s. 1. provides, that if a Justice of the Peace orders a Vagrant to be conveyed by a Pass, he shall order him to be publicly whipped, or be sent to the House of Correction for the space of seven days at the least; and that this has been done, shall be certified in the pass; and no one shall be so punished who shall not have been convicted of an act of vagrancy.

OBSERVATION.—This Statute was drawn by myself, by the direction of a number of Noblemen and Gentlemen, Justices of the Peace, two being delegated from each county. Its object was not the punishment of Vagrants, but the punishment of Magistrates, who, at that time, committed great abuses in the execution of the Poor and Vagrant Laws.

It was thought that no Justice of the Peace would dare to punish, by whipping or imprisonment, a pauper who had not really committed an act of vagrancy. But by the illegal wandering

Passes

Passes lately granted by Justices of the Peace in London and the neighbourhood, the Poor Laws have probably been a thousand times more abused than they were at that time.

I have not been able to procure a list of the Noblemen and Gentlemen who attended upon that occasion. In the course of twenty-seven years, by far the greatest part of them are now in their graves. I remember the present Earl Spencer (then Lord Althorpe) was one: I may take the liberty to say that he paid very particular attention to the subject. He has long, with great honour to himself, and benefit to his county and the kingdom at large, discharged the duties of a Magistrate, and presided as Chairman at the Sessions for the county of Northampton. This example I should strongly recommend to every young Nobleman and Gentleman of fortune and education throughout the kingdom; for it is clear, that without the constant exertions of such men, our lives, liberty, and property cannot be preserved or enjoyed in quiet and comfort.

See the construction of this Section in the beginning of the next Chapter.

Reward, when ordered.

SECT. II.—No Justice of the Peace shall order the reward to be paid for apprehending any rogue or vagabond until he shall have been punished,
and

and until the examination be transmitted to the next Sessions, there to be filed and kept on record.

OBSERVATION.—The object of this Section was still further to secure the observance of the Vagrant Laws, and to prevent abuses under them committed by Justices of the Peace themselves.

In some counties the Justice committing does not order the reward till the next Sessions, and until the examination is recorded there.

I should think it is transmitted to the next Sessions after it is delivered to the Clerk of the Peace, and it is his duty to see that it is filed and kept on record. But it cannot produce much inconvenience if the payment of the reward is deferred till the next Sessions. The Justices may make any reasonable orders or regulations not inconsistent with the directions of the Statutes. The reward fairly deserved ought always to be fairly and fully paid.

SECT. III.—No female Vagrant, in any case, is to be publicly whipped.

SECT. IV.—Any Judge at the Assizes, and the Justices at the Sessions, or any Justice of the Peace, whenever they shall think proper, may order any convict, upon his discharge from prison, to be conveyed by a Pass; or any person who shall

shall be acquitted, who shall apply to the Court, or to any Justice of the Peace for the purpose, that he was discharged from prison, or acquitted, shall be certified in the Pass, and he shall pay no fee for it.

OBSERVATION.—This seems to be a very useful provision; but, I am inclined to think, is seldom acted upon. It particularly deserves the attention of all Justices of the Peace, especially of those who act in the district in which the prison is placed.

SECT. V.—Justices at their Sessions may, if they think proper, make an order that all rogues and vagabonds shall be conveyed by the master of the House of Correction and his servants, instead of a Constable; and may order that the Constables shall take the Vagrants to the nearest House of Correction, to be forwarded by the master of it or his servants.

SECT. VI.—Justices at the Sessions may make orders for the allowance per mile, or otherwise, and such other rules as they shall think proper.

SECT. VII.—Every soldier or sailor wandering abroad and begging, shall be deemed a rogue and vagabond.

OBSERVATION

OBSERVATION.—This was intended to repeal a provision in their favour by Sect. III. in the 17 *Geo.* II. c. 5.

The further provisions for soldiers and sailors, and their wives and children, see the 43 *Geo.* III. c. 61. and the 58 *Geo.* III. c. 92. abridged and explained in Chap. IX.

SECT. VIII.—If any poor person shall not use means to get work, or neglect to work if he is able, or, by spending his money in any improper manner, his wife and family become chargeable; two Justices may punish him as an idle and disorderly person.

OBSERVATION.—This Section, I think, has not had the attention paid to it that it deserves. It may, with great propriety, be enforced against those who are supplied with money from the parish, and who will not do for the parish reasonable work in return.

CHAP. VIII.

SUMMARY OF THE PRACTICE OF THE PUNISH-
MENT OF VAGRANTS.

MAGISTRATES being frequently obliged to act alone in the commitment of Vagrants, the following summary for their direction will probably be found useful.

When any person is brought before a Justice, he must swear the Constable and the witnesses, who must prove that the person apprehended is an idle or disorderly person, or a rogue and vagabond, or an incorrigible rogue. The general case is, that he is wandering abroad and begging. It will be advisable to make a minute of their evidence, and to preserve it, that a conviction may afterwards be drawn from it, if it should be necessary. If he is satisfied that the person has committed some offence under the Vagrant Act, he must then examine the Vagrant upon his oath respecting his place of settlement: this must be written down and signed by the Vagrant, and also by the Justice of the Peace. If the Justice thinks it proper that he should be passed, he must take

two

two of these examinations, both alike and both signed by the Vagrant and the Justice.—See No. I. in the *Appendix*.

If he intends that he should be whipped, he must make out a warrant for the Constable publicly to whip him, or to cause it to be done.—See No. II. *Ibid*.

If he intends that he should be committed to the House of Correction, and kept to hard labour for any time, he must make out a commitment.—See No. III. *Ibid*.

The commitment must state expressly that he has been convicted, and of the species of the vagrancy which makes him a rogue and vagabond.

If he wishes that he should be passed forward to his settlement, (for that depends upon his discretion,) he must make out a Pass (See No. IV. *Ibid*.), that ought to be dated on the day upon which the master of the House of Correction delivers him to the Constable to be conveyed.

One of the examinations must be annexed to the Pass, and the Master of the House of Correction must deliver them to the Constable with the Vagrant.

Another

Another similar Pass and Examination, called the Duplicate, must be sent to the Clerk of the Peace.

If no Pass is signed by the Justice, still the Examination must be sent to the Clerk of the Peace.

Whenever a Vagrant is sent forward by a Pass, he must have been either whipped, or imprisoned for seven days at least, except when he is to be conveyed to Ireland or Scotland; then, by a statute passed in 1819, the punishment may be dispensed with. 59 *Geo. III.* c. 12.

The 1st Section of the 32d *Geo. III.* c. 45., and the former statute, seem to require that the Pass shall be made out and signed by the Justice of the Peace who committed him to the House of Correction, and who took his examination. The statutes are deficient in explaining how, and when, the steps of the proceeding are to follow each other.

If a Magistrate should live at a distance, suppose ten miles, from the House of Correction, and he should commit a Vagrant to it for seven days, or any other time, and he should be brought back by the Master of the House of Correction that

that he may receive the Pass from the same Justice, and that he should certify that he had been imprisoned for the time he had committed him, this would be attended with much inconvenience and expense; and it could not be supposed that the Justice was to go to the House of Correction for the purpose.

It does not seem competent to any Justice residing near the prison to do it, though that has been practised; I have therefore thought it the least objectionable measure to send a Pass dated upon the day immediately after the imprisonment of the Vagrant expires. The Justice in that case certifies, by anticipation, that an act has been done, but he may place a reliance in the Master of the House that he will discharge his duty.

So when the Justice commits the Vagrant to the House of Correction who is to be passed, he will send with him a commitment, dated the day on which it is signed: he will send the examination signed also on that day, and the Pass dated on the day upon which the Vagrant is to be discharged from confinement; and that ought to be directed to the Constable, who is to receive the Vagrant from the Master of the House of Correction; and there ought also to be annexed to the Pass a Certificate how he ought to be conveyed, with the rate of allowance. These three may be pinned

pinned together : the two first are sent on with the Vagrant.

If the Justice thinks it proper to send the Vagrant to the House of Correction for any time, without passing him to his place of settlement, he need send nothing with him but the Commitment.

It is in the discretion of the Justice, in all cases, whether he will order the Vagrant to be sent home by a Vagrant Pass: if he is not to be so sent, he may imprison him as he pleases; either for six days or sixty days, provided it is a less time than until the next Sessions.

If the Justices at the Sessions have made no general order how Vagrants are to be conveyed from the House of Correction, then the Magistrate must give a certificate how he is to be conveyed, and what is the allowance.—See No. V. in the *Appendix*.

The Justices at the Sessions frequently contract with a person to convey all the Vagrants. Great attention ought to be paid that that person strictly discharges his duty. He ought to be a Constable, that he may be punished as such for neglect of his duty.

After

After the examination is returned to the Clerk of the Peace, and the Vagrant has been punished, the Justice of the Peace may make an order upon the High Constable to pay the reward.

The fees allowed to the Justice's Clerk, and the expense of the Constable carrying him to the House of Correction, and the expense of carrying him from the House of Correction, if that is not provided for by a general order, I think had better be included in an order distinct from that of the reward. This last order may immediately be made upon the Treasurer: if he approves, they may be paid together by the High Constable.— See Nos. VI. and VII. in the *Appendix*.

I have known some Justices commit till the next Sessions, without intending that he should be examined by the Court; but intending to pass them themselves on the first day of the Sessions. That is not, in my opinion, correct. The commitment to the Sessions means, that they shall undergo a farther examination by the Sessions. But a Magistrate has a power to commit them till that day, specifying the day of the month, and on that day he may send them forward by his own private Pass.

The commitment must state that the Vagrant
was

was convicted, or he may be discharged upon a Habeas Corpus. The conviction need not be regularly drawn up, and returned to the Sessions, unless the Magistrate is required by some person interested to do it.

If he is committed till the next Sessions, he may still receive a further punishment without the return of the conviction.

But he ought not to be adjudged an incorrigible rogue, or be indicted as a felon, for a repetition of the offence, before the previous convictions are returned to the Sessions.

These cases rarely occur; but the conduct of some offenders may render them very necessary; and the Justices, upon all occasions, should be very cautious that every part of their proceedings should be conformable to the strict rules of law; and that the poorest subject should never have reason to complain, or any person for him, that he has been deprived of any right, liberty, or property, by the arbitrary power of a Magistrate, unauthorized by the law of the land.

In some counties, the Chairman and Justices require a regular conviction to be returned to the Sessions;

Sessions, upon the commitment of every Vagrant; but that I think wholly unnecessary, and adds a considerable expense to the county; for the Clerk to the Justice or Justices is allowed 5s. for every conviction.

In all cases of conviction, the Justices must take care that the minutes of the evidence are so carefully preserved, that a regular conviction may be drawn up, and filed at the Sessions, whenever it is required; but, unless there is some special reason for it, a great expense would fall upon the county, and loss of time to the Justices would be frequently incurred, by drawing up convictions, and returning them to the Sessions. But I have added the form of such a conviction in the *Appendix*.—See No. VIII.

If the Vagrant is committed on the 20th, the Pass ought to be dated the 27th; and he ought not to be sent forward till the morning of the 27th. Some Magistrates have thought it might be done on the 26th.

The first day, though he goes in late at night, reckons one; but he ought to be kept the whole of the seventh, or the last day, and be discharged the next morning. So that the general rule would be—if he came in on a Tuesday, and he is to be imprisoned

imprisoned one week or seven days, he ought to be discharged on the morning after the following Tuesday; if a month, on the Tuesday four weeks afterwards; if a calendar month, on the same day of the month in the following calendar month; as, if he is received on the 10th of May, and is committed for one calendar month, he must be discharged on the 10th of June; if for one year, he must be discharged on the 10th of May following; if for 12 months, and Calendar is not mentioned, he must be discharged on the same day of the week twelve Lunar months afterwards.

When sentence is pronounced at the Sessions or Assizes, that the imprisonment shall be for one month, it ought to be reckoned from the first day of the Sessions, or the first day of the Assizes; because they are all reckoned as one day; and what is done on the last day is considered as having been done on the first.

If the Magistrates, out of Sessions, in the execution of the Vagrant Laws, act illegally, an action will lie against them by the party injured; and if they act from any partial or corrupt motive, they may be prosecuted either by an indictment or by an information.

In the year 1788, Staples, a Magistrate, issued a warrant to apprehend C. Bannister, W. Palmer, C. Delpini, and R. Gaudry, and he committed them each for fourteen days as rogues and vagabonds, under 17 *Geo. II. c. 5. s. 2.* for acting plays in Wellclose Square without a licence. Two other Magistrates had bailed them. The Court of King's Bench were of opinion, that the commitment of a Vagrant is a commitment in execution upon a previous conviction; and that they cannot be bailed; that the conduct of the Magistrates was illegal; and, from all the circumstances, they thought it also corrupt; and therefore they granted an information against them. *The King v. Brooke, 2 Term Rep. 190.*

A *Certiorari*, to remove the proceedings, cannot be granted before an appeal to the Sessions. *The King v. Aldred, ib. 196, note.*

I have observed, that a regular conviction must be drawn up, if there is an appeal; but it is not necessary, when the Vagrant is committed, till the next Sessions, and there is no appeal. The Justices then must have the same evidence of the circumstances of the act of Vagrancy as the Magistrate who committed him; and other evidence, in addition, may be received: and though they can commit only for six months more, yet they

they can whip as much as they think proper, as if he were an incorrigible rogue.

The expense upon the county rate, for the commitment of each Vagrant, is very great.

The person apprehending a Vagrant as a rogue and vagabond is, in all cases, entitled to 10s. The fees for the Justice's Clerk, allowed in the county of Hertford, as settled by the Judges Heath and Le Blanc, are as follow :—

	<i>L.</i>	<i>s.</i>	<i>d.</i>
Every examination of a Vagrant and Oath	0	2	0
Warrant to a Constable for whipping a Vagrant . .	0	1	0
Commitment of Vagrant to the House of Correction,	0	1	0
Every Pass and Duplicate	0	2	0
Order to Constables for apprehending persons, to be paid by Overseers	0	1	0
Order for payment of 10s. for apprehending a Vagrant	0	1	0

So when a Vagrant is to be passed, the reward of the person apprehending, and the fees of the Clerk, amount to 16s., and, with the conviction, will amount to 17. 1s.; besides the expenses of the conveyance by the Constable, at 1s. 3d. a mile.

An experienced Justice of the Peace has told me, that the commitment of Vagrants, one with another, costs the county 50s. To suppress this crime

of Vagrancy effectually; they ought to be committed to hard labour for one or two months, or until the next Sessions; and though the expense falls very heavy upon a county, yet it is probably the cheapest way of maintaining them, and, in a well-regulated House of Correction, may improve them, by teaching them habits of industry. But to send them only for seven days, a great expense is incurred; and they are only sent to another part of the kingdom, to follow the same idle and dissolute practices.

In several towns in the country there is established an Association for the suppression of begging, and great sums are subscribed for it by individuals. - That I thought perfectly unnecessary; as so large a sum as 10s. was given for the apprehension of every Vagrant, so long ago as the year 1744.

But the object of these Associations in the country is rather to sweep away the nuisance from their own doors, than to annihilate it throughout the kingdom.

The Magistrates, in every county, ought to determine to treat all Vagrants with great severity, with a long commitment to hard labour simultaneously. The present way of managing this subject

subject in the country, produces an augmentation, rather than a reduction, of the evil. Those who drive them away by gentle means from themselves, do no more than drive the wasps, unhurt, from one bee-hive, to flock and prey in greater numbers round all the other hives. They are well fed, and lodged seven days, in the House of Correction; they are then well fed, and lodged in the nights, and ride in a cart to a distant part of the kingdom, where they are never received by the Overseers, or sent to Ireland: so they begin the same practices; and if they are again apprehended, and carried before a Magistrate, they expect to receive again, probably, the same reward.

CHAP. IX.

WHAT WALKING-PASSES ARE GOOD; AND THE
EFFECT OF THEM.

IN the former Chapters I have fully explained all illegal Wandering Passes, which it is a great indictable misdemeanour for any Justice of the Peace to sign; and he who wanders and seeks relief with them, even of Overseers and Constables, is completely a rogue and vagabond.

But there are two which Justices of the Peace ought to attend to, and to permit the bearers of them to have the benefit of.

The general Vagrant Act, the 17th *Geo.* II. c. 5. s. 3., made an exception of soldiers and sailors, if they begged under certain circumstances, and they were not to be treated as vagabonds; but this was repealed by the 32d *Geo.* III. c. 45. s. 7., which declared that a soldier and sailor begging was to be treated like all other persons. This continued so from 1792 till 1803, when a statute was passed upon this subject alone. It is the 43d *Geo.* III. c. 61., and is intituled

“An

“An Act for the Relief of Soldiers, Sailors, and Marines, and of the Wives of Soldiers in the cases therein mentioned, as far as relates to England.”

The preamble of the statute then states, that great inconveniences arise to places where *soldiers* are *discharged* from a regiment, or *sailors* from a ship: it therefore provides, that if a soldier discharged from a regiment, or a sailor from a ship, shall carry his discharge within three days to the Chief Magistrate of any town within fifteen miles from the place where he was discharged, such Magistrate may grant him a certificate, stating the place which he is desirous of going to as his home or settlement, and shall specify a time not more than one day for every ten miles, within which time he may ask relief, without being deemed a vagabond.

SECT. II.—Soldiers' wives not permitted to embark with their husbands, may obtain a like certificate.

SECT. III.—In case of accident or sickness, duly proved, which shall prevent the person having such certificate from proceeding according to the terms of it, the Chief Magistrate of the city, town, port, or corporate place, where such person shall

shall be, shall grant a new certificate, stating the reasons for granting the same, containing the like provisions, and shall annex it to the former certificate.

SECT. IV. — Certificates or Passes granted as heretofore from the Office of Admiralty or War Office, to discharged sailors, soldiers, or marines, or to the families of such serving abroad or lately deceased, to carry them to their homes, shall protect them from being treated as Vagrants, if they seek relief; and that the terms of the same may be extended in each instance from another Magistrate, in manner herein before mentioned.

This statute requires particular attention. The persons described may seek relief; it does not say of whom, whether of individuals or of parish-officers; and no one is compelled to give any thing. By this statute, Passes may be granted to soldiers, sailors, and their wives and children: but the Pass contains a memorandum that no one is obliged to give any thing upon it.

For the use of Magistrates, I shall give the copy of one, which I obtained at the War Office:

HERE:

PASS

PASS for _____
of His Majesty's _____ Regiment of _____

*By the Right Honourable HENRY JOHN VISCOUNT
PALMERSTON, His Majesty's Secretary at War.*

PERMIT the Person above named, without any
Let, Hindrance, or Molestation whatsoever, to
pass to

Places
leading from
London.
—

proceeding thereto by the Places mentioned in
the Margin; provided he continue in the Post-
road; and do not remain above Twenty-four Hours
in one Place, excepting in case of Sickness: he
behaving as becometh

This Pass to continue in force for _____
from the date hereof, and no longer.

Given at the War-Office, under my Hand, and the
Seal of this Office, the _____ day of _____ 181

By Direction of The Secretary at War.

*His Majesty's Officers Civil and Military;
whom it may concern.*

MIDDLESEX TO WIT.

Permitted to pass this County.
Public Office, Bow-street,
day of _____ 181

R. BIRNIE,

Magistrate.

MEMORANDUM.

*This Pass is granted solely
with a view to protect the
Bearer of it from molestation
as a Vagrant, and does not
entitle _____ to any relief
beyond what _____ might re-
ceive if travelling without
this Pass.*

It is signed, not by the Secretary at War, but by his Deputy Secretary, or some officer for him, and it is sealed with a wafer seal near the top.

It is signed also by one of the Magistrates at the Public-Office at Bow Street.

It is indorsed on the back with blanks, to be filled up thus :

Pass for _____

 from London to _____

WAR OFFICE, _____ 181

The last Pass I have described is merely to protect the persons described from punishment : but in the years 1811 and 1812, two acts of parliament were passed, to enable wives and children of soldiers embarked for foreign service, or who had died in the service, to travel at the expense of the Government. And at the expense of the Government every person ought to travel, to whom any Pass can legally be granted : no Pass ought ever to be granted to a soldier, sailor, or to any person at the War Office or Admiralty, unless that person is to travel at the public expense.

But

But I shall abridge the existing statute upon the subject, 58 *Geo.* III. c. 92.

“An Act to consolidate and amend the provisions of several Acts passed in the 51st and 52d years respectively of the reign of his present Majesty, for enabling Wives and Families of Soldiers to return to their homes.”

This statute is to enable the wives and families of soldiers who had embarked for foreign service, or who have died in the service, to return to their homes.

SECT. I. states, that it is expedient that the former provisions upon this subject should be repealed.—51 *Geo.* III. c. 106. and 52 *Geo.* III. c. 120. and 52 *Geo.* III. c. 27. are consolidated into one act, and repealed.

SECT. II. enacts, that it shall be lawful for the Secretary of War in Great Britain to issue Passes, to be filled up by any Magistrate, for granting allowances to enable the wives and children of soldiers to return to their own homes, in the cases specified in this act, and in other cases in which the Secretary at War shall think expedient; and to make such regulations as he shall think fit

fit respecting the filling up the Passes and the Certificates, and vouchers respecting the allowances.

SECT. III.—The Commanding Officer of every corps about to embark for foreign service, and in which any soldier shall die in service, leaving any wives, widows, or children, unable to return to their own homes, shall make a return of the places of residence to which they are desirous of proceeding to in Great Britain or Ireland; and shall give to each wife or widow a duplicate of the return which applies to her and her children; which shall state, that it is given only to identify her before the Magistrate, to enable him to fill up the Pass allowed by the Secretary of War; and the officer shall transmit duplicates of such return to the Secretary of War in London.

SECT. IV.—Each wife or widow shall take her duplicate to some neighbouring Magistrate, who shall fill up an engraved copper-plate Form of Pass, bearing his Majesty's arms, and signed by the Secretary at War, and sealed with his official seal, such as shall be transmitted to him for the purpose; and such Magistrate shall fill up and certify the same, and make out a route in the proper column, specifying the place to which she is going, and her route;

route; and shall deliver the Pass to her, in exchange for her duplicate; and she may receive an allowance not exceeding $1\frac{1}{2}d.$ per mile for herself, and one penny for each child.

SECT. V.—And upon production of the Pass to any Overseer of any place through which such woman shall proceed, according to the route in the Pass, he shall pay the allowance specified in the Pass for the number of miles to the next place to which she is going, not exceeding eighteen miles; and he shall indorse on the Pass the money so paid, and shall take a receipt from the woman, specifying the regiment, or corps, to which her husband belongs; or, if dead, did belong; so that the description in the Receipt and the Pass may correspond.

SECT. VI.—The Overseer shall receive the money so paid from the Collector of Excise, and shall give him a receipt, and the woman's receipt; and the money shall be repaid by the General Agent of the Secretary at War, to some person appointed to receive it by the Commissioners of Excise.

SECT. VII. directs how the money shall be paid in Dublin.

SECT.

SECT. VIII.—If any woman or child, by reason of sickness or accident, shall have been left so as they could not have the benefit of the return described there, the Commanding Officer of the place may make such return and duplicate as is above specified.

SECT. IX.—When the woman receives her last allowance before her arrival at home, the woman shall deliver up her Pass to the Overseer; and he shall deliver it to the Collector of Excise; and he shall transmit it to the Secretary at War in London.

SECT. X.—If a woman with such a Pass is detained by sickness, or any other cause, a Justice of the Peace may give her an order to receive the sum of one shilling a-day, and sixpence a-day for each child, from the Overseer; and at a port, the District-master, as long as she shall be detained; and such Order, the Receipt of the woman, and a Certificate by a Magistrate of such detention, shall be a voucher of such payment, and shall be allowed as before described.

SECT. XI.—Women who have such Passes, and who do not comply with the regulations, may in all respects be treated as Vagrants.

The Pass granted under this Statute is granted only to soldiers' wives and widows, and their children: it is called an Allowance Pass; because the allowance which is paid by the Overseers of the Poor is paid to them again by the Collector of the Excise of the district; so it falls where it ought, upon the country at large.

This Pass is very beautifully engraven, with the King's Arms, upon a sheet of fine large strong paper; is signed by the Secretary at War himself on the first page; and sealed with the arms of the office. The two next pages contain the route and a particular description of the woman; and on the last side is endorsed, "Certificate, Route, and Description of Soldiers' Wives or Widows, under the 58th *Geo. III. c. 92.*"

I should recommend it to Magistrates who reside near the great roads from London, to procure a copy of each species of Pass granted at the War Office, to prevent the Overseers of the towns or villages upon the road from being defrauded by forgeries.

Though it is very difficult to forge with success the Allowance Pass, from the superior excellence of the workmanship; yet women and children

sometimes go about with an imitation of it. Several women, with their families, boys and girls grown up, were prosecuted at the Hertford Assizes, in the Spring 1819, by the Government, for carrying false Passes of that kind, and for obtaining money upon them.

It perhaps could not be proved that they forged them : the actual forgery of them would only have been a misdemeanour : they were indicted for a conspiracy to obtain money by a false pretence. They were found guilty ; and the senior part were sentenced to one year's imprisonment, and the younger prisoners for two or three months.

They might have been punished as Vagrants, for wandering and begging, or for wandering abroad, lodging at ale-houses, and not giving a good account of themselves. The punishment would have been sufficiently severe.

Several have been so punished for carrying the forged Permit Passes of Justices of the Peace ; though they are, when they are authentic, perfectly void, and the bearer of them is a Vagrant : yet he is a more criminal Vagrant when he travels with one which he knows to be a forgery.

In some counties, the Vagrants are not brought
up

up to the Public Court of the Sessions ; but the Magistrates dispose of them at an adjourned Sessions, in a private room : but I am of opinion, that the subject is of that importance, that the Justices in every county ought to give as much publicity as possible to all their proceedings for the suppression of Vagrancy.

CHAP. X.

HOW BLASPHEMY, SEDITION, AND WICKED PUBLICATIONS, MAY BE SUPPRESSED BY THE EXISTING LAW.

IN the preceding Chapters, I have fully proved that every Justice of the Peace may issue his warrant to apprehend every person who is selling in a shop, or out of it, any blasphemous, seditious, or wicked publications ; and may commit him till the next Sessions or Assizes, or hold him to bail, to appear there, and in the mean time to be of good behaviour. He need not bind any one to prosecute.

This may be done if the publication is given away, or if any thing is sold at a shop, and the article is wrapped in it. This, I have been informed, has been lately a common practice adopted for the dissemination of wicked papers. But all this, by attentive Magistrates, may easily be suppressed.

Under the Vagrant Laws, all persons wandering with wicked publications may easily be checked in
their

their career; for even if they had the licence of a hawker and pedlar, they may be treated as is described above; and if they have no such licence, then they come under the description of *petty chapmen and pedlars wandering abroad, not being duly licensed, or otherwise authorized by law**; or of those *who wander abroad, lodging in ale-houses, barns,*

* This, in my opinion, is absolutely the law of the present day; but I should advise the Magistrate to demand his licence as a hawker, and, if he does not produce it, to demand ten pounds under the Hawkers' and Pedlars' Act.

In the year 1810, all the former statutes were consolidated into one statute, viz. the 30th Geo. III. c. 41.; and by that statute it is enacted, "If any petty chapman, upon demand by any Justice of the Peace, Mayor, or Constable, shall not produce his licence as a hawker, he shall forfeit ten pounds; and for non-payment thereof, shall suffer as a common Vagrant, and be committed to the House of Correction:" (sect. 17.) This statute not to prohibit any person from selling *printed papers licensed by Authority.*

It would perplex many persons to explain what is meant by "printed papers licensed by Authority." But in looking back into a former statute, the 9th and 10th Will. III. c. 27. the words are fully explained, viz. Acts of Parliament, Forms of Prayer, Proclamations, Gazettes, stamped Almanacks, or other printed papers licensed by Authority. In the existing statute, for the sake of a ridiculous brevity, the last words only are used: they signify, therefore, such as are in the former statute specified.

It also excepts fish, fruit, and victuals; and the makers or workers of any goods or wares, and their children, apprentices, agents, and servants; and also tinkers, coopers, glaziers, plumbers, and harness-makers.

barns, out-houses, or in the open air, not giving a good account of themselves.*

The punishment under the Vagrant Laws is quite sufficient both to restrain male and female offenders: they may be committed till the next Sessions, and may be imprisoned six months longer, and the males whipped as often as the Justices shall think proper.

It is now the deliberate design of those, who are labouring to produce a Revolution in England,
to

• This clause of the Vagrant Act would properly apply to persons travelling with impious, seditious, and wicked books and papers, more particularly if they would not declare from whom they had received them.

Lately a man's conduct was such as led me to suspect that he would have robbed me, if I had not been joined by a servant. He was frequently seen, in company with a woman, in a wood adjoining to a high road. They were, after some time, apprehended, and brought before me. They were not married. She admitted that she subsisted by prostitution; and he admitted that he had no means of subsistence but from her bounty.

I sent them both to the House of Correction till the next Sessions; and then they were passed to their respective places of settlement, far distant from each other: and if ever they again infest the same neighbourhood, they may by the Sessions be treated with much more severity.

I state this to shew that these laws may correctly be applied to many salutary purposes.

to destroy all reverence for religion†: and in order to increase the quantity of brute force to be exerted by atheism, deism, murder, robbery, and rebellion, against the legitimate strength of wisdom, justice, and benevolence, they incessantly inculcate upon the minds of the lower classes, that the laws of God are a rank imposture, and those of man an insufferable tyranny; and that as all will die like brutes, it is the interest of all to live like brutes.

I lately

† Before the shocking murders and massacres in France, women and children were taught to deny and detest their Creator. A prostitute was exhibited in public, as the Goddess of Reason, who alone was to be the object of their worship and adoration: and to efface, as far as folly could efface, from the minds of men, the remembrance of religion and religious worship, Sunday and the Sabbath were blotted out from their Almanacks and calculations of time.

It has been justly said, that the eternal God of Wisdom first deprives those of wisdom whom he wishes to punish and destroy:—"Quem Deus vult perdere, prius dementat."

The well-disposed part of the people of England have reason to offer up thanksgivings to Heaven, for having been almost miraculously delivered from the horrible consequences of such an awful instance of Divine vengeance, by the conviction of Carlile, the Blasphemer.

I am sorry that it escaped my own observation at the time: but I have been assured since, by many persons, that the villages and roads within the farming counties swarmed with the sellers of detestable books and prints before his conviction; but upon that event they all immediately, or almost all, disappeared.

I lately travelled in a stage-coach full of passengers; when one of them, a man, a violent propagator and supporter of Revolutionary principles, declared that the Scriptures had lost all influence over the Radical Reformers; and that lately, in a town in Lancashire, (I forbear for its honour to mention its name,) a number of them stuck three or four Bibles with the New Testament upon a spit, and basted and roasted them in derision: and he stated this horrid fact as if they had done nothing for which in this world they could be called to an account; as he observed, that every one had a right to do what he would with his own property.

He was surprised to hear from me, that if the Almighty had not vindicated his just government, by striking them dead with lightning, or burying them in the ruins of the house, every Court, whether Judges or Justices presided in it, in which they were found guilty of the abominable deed, ought to have pronounced a sentence, that they should be imprisoned ten years, or at least five years, and be publicly whipped twice every year, and find sureties for their good behaviour for life.

Blasphemy may be committed by written or printed papers, by words uttered, or by actions; and the most horrid of all blasphemy may be committed by actions like these.

In

In all these cases the offender may be held to bail. Bail must not be excessive ; but in every case, it is intended to prevent flight from the punishment, or the jurisdiction of the Court ; it therefore ought to be proportioned to the heinousness of the crime, and the offender's ability to ransom his person by a pecuniary payment.

CHAP. XI.

CHARGE TO THE GRAND JURY OF THE ISLE OF
ELY, AT THE ASSIZES HELD AT ELY,

FEB. 15, 1819.

(Printed at their Request.)

GENTLEMEN OF THE GRAND JURY,

I AM sorry to see that our Calendar, at these Assizes, contains a greater number of Prisoners than usual : but I am glad to find, that by far the greatest part of the Commitments are for such trifling offences as might have been tried with great propriety and effect at the Quarter Sessions. I will not detain you with any observations upon the indictments to be preferred before you, because I see several Magistrates upon the Grand Jury ; and I have the satisfaction to know, that the Gentlemen of this Isle are well acquainted with their duties as Grand Jurymen : for it affords me singular pleasure, that I can still with truth declare, that for the last nineteen years, which I have had the honour to preside here, I have never had a single commitment by a Magistrate, a finding of a Grand Jury, or a verdict by a Petty Jury, which

which has not met with my perfect approbation, and which I should not have joined in myself.

But I shall trouble you, at some length, with observations upon the Criminal Law; and I trust that I shall convince you, and all who are present, that the clamour now existing against the Laws of this Country is founded in a misrepresentation of facts, in a misapplied humanity, and a misconception and ignorance of the principles of the Laws of England.

It is now everywhere asserted, that persons injured by crimes refuse to prosecute offenders; Juries find verdicts contrary to the facts proved, and Witnesses do not give correct evidence, on account of the severity of the punishment. Very few Barristers have lived more in the Criminal Courts, in the country, than I myself have done; and I will venture to declare to you and to all the world, that all this, according to my knowledge, is not only a great exaggeration, but a perfect misrepresentation. I never was present in my life where the Jury gave an improper verdict, from being misled by their compassion for the prisoner.

I appeal to you, Gentlemen of the Grand Jury, to the Magistrates of this Isle, and to all present, whether any of you ever saw, within this jurisdiction,

diction, any Jury shew a disposition to disregard their oaths, and to deliver a verdict not supported by the evidence. And I never yet saw within this jurisdiction a prevaricating witness, or one who attempted to suppress the truth, from an inducement to favour the prisoner.

Two unfortunate young men were compelled to give evidence, some time ago, against their brother-in-law, who had attempted to poison them both, in order to obtain their property. They did not appear at the first Assizes; but at the second Assizes the Magistrates very properly took them into custody, and brought them by an officer into Court, when they gave their evidence consistent with truth and public justice, though they manifested, at the same time, an amiable anxiety not to complete the misery of their sister. Justice was finally executed upon the offender, who before his death confessed his atrocious crime*. There
may

* The prisoner's name was Whiting. I believe he was the first person who was prosecuted under Lord Ellenborough's Act, the 43d Geo. III. c. 58. for administering poison, or causing it to be administered, with intent to murder. His intent was to murder the two brothers of his wife. He kept a shop, and amongst other articles dealt in flour: he sent some to be made into a pudding for their dinner, when he knew they would dine alone. They both ate of it, but its extreme nauseousness prevented the intended effect. They were both extremely ill for a long time afterwards. One, having retained
more

may be, as in that case, sometimes amongst relations or near connections, an unwillingness to prosecute; but, fortunately for the public safety, the prosecution is not left to their choice. The person injured may be bound to prosecute; and every person who can give any material evidence, in a case of felony, may be compelled by a Justice of the Peace to appear at the next Assizes, and give such evidence.—2 *Phil. & Mary*, c. 10.

Justices of the Peace never shew any inclination to shrink from the strict and full discharge of their duty; but it is sometimes suggested, that they are more zealous to apprehend and commit in proportion to the punishment to be inflicted upon the offender, or the heinousness of the crime; as this may be thought to contribute to their individual consequence or self-importance.

Such

more upon his stomach than the other, lingered a long time; and I am informed that he is dead, and, as it is supposed, in consequence of the poison. The evidence, in such cases, must be always, or generally so, altogether circumstantial. The verdict of the Jury was satisfactory to all present. The prisoner was a man of some education, and had even been, occasionally, a Preacher to some sect of Christians within the Isle of Ely. For some time after his trial he persisted in declarations of his innocence; but several days before his execution, he confessed his crime and the justice of the laws of his country, and died very penitent.

Such an ambition, if it exist, I consider laudable and highly beneficial to the interests of the country; which owes its safety, I might almost say its existence, to the exertions and co-operation of those Country Gentlemen who undertake the arduous duties of a Justice of the Peace.

Offenders frequently escape from punishment, because the persons whom they have injured will not complain to a Magistrate, on account of the trouble and expense they must incur in the prosecution. This motive is not at all affected by the degree or nature of the punishment. It is precisely the same, whether the punishment be death, transportation, imprisonment, or hard labour. To counteract this most prevailing motive, I have here and everywhere recommended Associations of Men of Property, who will join in the expense of pursuing and prosecuting felons. I have heard murmurs of disapprobation of such Associations; but I never yet heard any objection, which I could so understand, as to deserve an answer. And you all know, that within this jurisdiction, whoever requests the costs of a prosecution, which I have been convinced has been commenced with reason for the public good, I have thought it my duty to order them to be allowed out of the general rate of the Isle. The public safety, or the safety of each individual, ought

ought to be purchased at the public expense: and I have the satisfaction of thinking, that, by that means, there is no part of England where so few crimes are committed, because no where, of the crimes committed, so small a portion of them is compromised, or escape unpunished. And I appeal to you, Gentlemen of the Grand Jury, and to the respectable Magistrates who surround me, whether the severity of any punishment denounced by the laws has ever, in any instance within your observation, produced the impunity of the guilty.

I declare to you and to this audience, I have never known a single instance, either here or in any other Court. I have the authority also of an honourable Barrister, who has attended the Northern Circuit between thirty and forty years; to declare, that he never knew such an instance upon that circuit; where, from the immense population of Yorkshire and Lancashire; with the four other Northern Counties, it must be supposed that there is a much greater variety of criminal business than upon any other circuit.

After this declaration, which I think it my duty to make to you in the face of all the world, you may suppose what was my astonishment, when I read, in a Petition from the Lord Mayor and the Corporation

Corporation of the City of London, to the House of Commons *, the following sentences :

“ That the determination, by Juries, to counteract the severe enactment of our Laws, is of *daily occurrence*.

“ That amongst other instances, a Jury, rather than be instrumental in inflicting the punishment of death for larceny to the amount of 40s. from a dwelling-house, found a ten-pound note to be worth only thirty-nine shillings.

“ That another Jury, influenced by the same motives, found two Bills of Exchange, value of ten pounds each, and eight Bank-notes of the value of ten pounds each, worth the same sum of thirty-nine shillings.”

Two instances are referred to in that Petition, in which it is stated, that a Jury at the Old Bailey found that the prisoner in each case was guilty of stealing, in a dwelling-house, a ten-pound Bank-note, of the value of thirty-nine shillings. Anxious to see what observations the Judges, who had tried such cases, had made to the Jury, I have
taken

* Petition presented to the House of Commons, January 25th, 1819.

taken the trouble to seek for and to examine each of them in the Sessions' Papers themselves.

One is in the year 1807, p. 331.

John Meakings was indicted for stealing a pocket-book value 6*d.* and two bills of exchange, and three Bank-notes of the value of ten pounds each, in a dwelling-house. The wife of the prosecutor proved, that she had put two bills of exchange for ten pounds, and three ten-pound Bank-notes, into a pocket-book, and that she then placed the pocket-book in a glass-drawer not locked up, in a room, the door of which also was not locked. There was no evidence whatever that the prisoner, who was apprehended in the house, had ever in his possession a ten-pound note. But another apprentice, who had been, at the first, apprehended for the theft, proved, that the prisoner told him that he had got a pocket-book, but he told him nothing of the ten-pound notes.

The Jury found him guilty of stealing to the value of thirty-nine shillings.

The learned Judge, Lawrence, made no observation, but ordered him to be confined one year in the House of Correction, and fined one shilling.

Except that he could not have been fined one shilling, the punishment might have been precisely the same if the Jury had found him guilty of stealing to the value of sixpence, or one penny. Every one, who remembers that learned Judge, knows that he possessed great abilities, and some degree of severity of manner. He never would have permitted a London Jury to have brought that disgrace upon themselves, which is now thrown upon them by their Chief Magistrates, the Lord Mayor and the Aldermen of London; viz. that we find the prisoner guilty of stealing five ten-pound Bank-notes, and that we find these notes also of the value of thirty-nine shillings.

So gross an absurdity, that able and correct Judge would never have endured in silence.

He might have thought, with the Jury, that the woman had never put the Bank-notes into the pocket-book, or that they might have been taken out by some other person before the prisoner had stolen the book.

Another case, something similar, occurred a year afterwards: Bridget M'Allister was indicted for stealing a box of the value of 1*d.* and a ten-pound Bank-note, in a dwelling-house.

No evidence whatever was given that the woman was ever in possession of a ten-pound note. The Jury found her guilty of stealing to the value of thirty-nine shillings. This case was tried by Mr. Baron Graham, who sentenced her to be confined six months in the House of Correction, and to be fined one shilling*.

The same observations apply to this case as to the last. So, for two cases, which are substantially correct, and which would have been perfectly so if each prisoner had been found guilty of Petty Larceny, the London Juries and all Juries are to be slandered, the Judges insulted, and the whole administration of justice degraded: and though the whole of the records of the Old Bailey, and of the Assizes in the country, have been ransacked to discover the absurdities of Juries, these two solitary instances have been produced; and the world is told by the Mayor and Aldermen of the city of London, some of whom sit constantly with the Judges at the Old Bailey, that such verdicts are of *daily occurrence*†.

I have

* This case is in the Sessions' Paper for 1806, p. 18.

† Since this was spoken to the Grand Jury, I may add all the verdicts at one Assizes more, which have met with my perfect approbation. And two of the Counsel, who have attended

I have the honour of being personally acquainted with both the Aldermen who presented the Petition; and I believe them both to be men of strict integrity: and I am sure they will be much shocked when they find they have been so greatly imposed upon.

Juries may sometimes give absurd verdicts from ignorance; but I never knew an instance, I repeat it, from a wish to give a verdict contrary to the evidence, and to counteract the established law of the land.

As an instance of a verdict given at the York Assizes from a degree of ignorance, I may mention one, which I accidentally learned in Hertfordshire.

One day I was taking a morning ride, when, near a turnpike-gate, I heard two or three men at the gate call after a stage-coach from York, in a taunting

me for nineteen years, and have also attended the whole of the Norfolk Circuit, have declared, that they never knew an improper verdict upon that Circuit, from compassion to the prisoner. One of them, who has attended much at the Old Bailey, remembers Lord Alvanley saying to a Jury there, "Thank God, Gentlemen, this is your verdict; not mine." This is all the evidence they can give of "*daily occurrence*," or every day's practice.

taunting manner, "*Manslaughter! Manslaughter!*" This induced me to inquire what it meant; when the men told me, with much triumphant delight, that a Yorkshire Jury, a short time before, had found a prisoner guilty of manslaughter, for killing a man who was then alive and well in the witness's box. I immediately knew what the nature of the case was; and I thought if they never made a greater error than that, we should long enjoy the blessings of the Trial by Jury.

The prisoner had been indicted for stabbing or cutting, under Lord Ellenborough's Act: and that Act provides, that if the circumstances are such, that if the prosecutor had died of his wounds, and the prisoner would only have been guilty of manslaughter, then he must be acquitted of the charge of stabbing with intent to murder, maim, or do some grievous bodily harm, under that statute; for it would be inconsistent to punish with death for wounding, when if the wound produced death the punishment would only be a fine and a short imprisonment. This having been explained to the Jury by the Judge, who had told them they must convict or acquit the prisoner as they thought it would have been murder or manslaughter if the prosecutor had died of the wound he received,—the Jury, after deliberation, delivered their verdict: "My

“My Lord, we find the prisoner guilty of manslaughter.”

The next step then followed, of course, that he is not guilty of the crime charged in the indictment.

This might create a moment's smile; but though it betrayed a little ignorance, it shewed no wilful intention to be guilty of perjury, and to act in defiance of the authority of the Judge, and in wanton contempt of the law of the land.

If a Jury gave a verdict contrary to the evidence, and contrary to the law, in favour of a prisoner, they have been said to commit a pious perjury. This is a strange abuse of language: all perjury must be impious; and that of Jurymen must necessarily be to the greatest extent mischievous and injurious; for they invade the province of the Judge, and usurp the prerogative of the Crown; and if they are the first to trample upon *Magna Charta*, the grand object of which was to secure the *Legale judicium parium*, that is, The legal Trial by Jury, they are deserving, in the highest degree, the punishment which Cicero has declared ought to be inflicted upon all perjury; viz. Infamy in this world, and perdition in the next—*Pœna perjurii humana, dedecus, divina, exitium*.

Some

Some who have miraculously survived the revolutionary massacres in France, where the most foul blasphemies were uttered and publicly exhibited against their God that Atheism could invent, where their King and his unoffending family were cruelly murdered, and the most shocking barbarities perpetrated which monsters in a human form could devise and execute against their fellow-creatures, have still the insolence to pronounce the laws of England to be a system of barbarous laws. Though they have borrowed from us the Trial by Jury, yet they manage it so clumsily, that a late trial for murder, which every one of our twelve Judges would in all probability have finished to the satisfaction of all the world in twelve hours, was protracted for several months. The prosecutor, the son of the deceased, acted with a fortitude and dignity becoming his mournful situation; but there was such a commixture and confusion of prisoners, witnesses, advocates, and judges, that every Englishman must turn away from the perusal, with pity, disgust, and contempt for the silly forms, rules, and conduct, by which justice is administered in the public Courts in France upon the most awful occasions, and must have great reason to congratulate himself that he is an Englishman.

The most antient Grecian Historian has made
the

the following observations upon the partiality that every country had for its own laws, in his time :

“Whoever had the opportunity of choosing, for their own observance, from all the nations of the world, such laws and customs as to them seemed the best, would, I am of opinion, after the most careful examination, adhere to their own. Each nation believes that their own laws are by far the most excellent; no one, therefore, but a madman, would treat such prejudices with contempt*.” *Herodotus*, lib. iii. c. 38. *Beloe's Translation*.

This partiality and attachment to the laws of their country, till these illuminated modern times, was the peculiar characteristic of Englishmen. Our wise and sturdy ancestors, the vindicators of *Magna Charta* and our invaluable liberties, did not resort to new inventions and new-fangled schemes. They wished only that the favourite laws of their forefathers should be inviolably secured to them *per legale judicium parium suorum, vel per legem terræ*—“by the legal Trial by Jury, or by the law of

* Εἰ γὰρ τις προθείη πᾶσι ἀνθρώποισι ἐκλέξασθαι κελεύων νόμους τοὺς καλλίστους ἐκ τῶν πάντων νόμων; διασκεψάμεναι ἂν ἐλοίατο ἕκαστοι τοὺς ἐωϋτῶν οὕτω νομίζουσι πολὺ τι καλλίστους τοὺς ἐωϋτῶν νόμους ἕκαστοι εἶναι. οὐκ ὡς οἴκας ἴσθαι ἄλλον γε δὴ ἢ μαινόμενον ἄνδρᾴ γέλωτα τὰ τοιαῦτᾴ τίθεσθαι.

of the land;" all of which had probably existed for many centuries before that time.

And almost in the very next page to *Magna Charta*, in our Statute Book, we find, that when the Bishops wished to make but a trifling change in the laws, "all the Earls and Barons answered with one voice, That they would not change the Laws of England, which had hitherto been much used and approved :"—"Et omnes Comites et Barones unâ voce responderunt, quod nolunt leges Angliæ mutare, quæ hucusque usitatæ sunt et approbatæ."—20 *Hen. III.*

These were all the Members of the Parliament, besides the Bishops, at that time.

Chancellors and many learned men have written in praise of the Laws of England; but it was left for their ungrateful and degenerate sons to rush with a furious zeal to degrade and destroy all that is valuable and venerable in that noble fabric, which has withstood the storms of ages, and which, I trust, will remain unimpaired for ages to come*.

The Law of England is now represented as a sanguinary, blood-thirsty system of laws, never to be satiated with the blood of the people.

But

* See, in the next Chapter, some strong testimonies in favour of the Law and Government of this country.

But if the history and the principles of the Law of England are investigated, it will be found, in its origin and in its progress, that it is a system of lenity and benignity, and that it has always had for its object liberty and mercy ; and that its great design was, to protect the innocent from arbitrary power, rather than to punish the guilty for their crimes.

First of all ; the commitment of a Magistrate*, the finding of a true bill by a Grand Jury, the verdict of guilty by a Petty Jury, must all concur, before a criminal can receive any judgment, let the sentence of the law or the punishment be what it may. And even then he may receive a mitigation, or a remission, of the punishment, from the prerogative of the Crown. Every offender must, in every case, have all these chances in his favour, let the punishment be what it may, slight or severe ; because all these the Constitution has provided, as the guardians of the innocent.

In every jury there must be the concurring voices of twelve of his peers, before he can be deprived of any right or liberty. The *legale judicium parium suorum*, upon all occasions, must be a majority, but

a ma-

* The previous commitment by a Magistrate is not necessary before an indictment is preferred ; but in the case of felony, it is very rare, indeed, that an indictment is preferred before the party is in custody.

a majority consisting of twelve concurring votes. You, Gentlemen Coroners, ought never to permit your juries to find a verdict of *felo de se*, though there be a majority for it, unless that majority consist of twelve.

In the celebrated Tribunal of the Areopagus at Athens, we are told, that after the cause was heard, the judges deposited their suffrages in two urns; one of which was called the Urn of Death, the other the Urn of Mercy. When the numbers were equal, an inferior officer added, in favour of the accused, the suffrage of Minerva.—*Travels of Anacharsis the Younger*, Vol. II. p. 294.

How infinitely more favourable to mercy and lenity is the Law of England, where twelve of the Grand Jury must concur in putting a prisoner upon his trial, before twelve more, who must be unanimous in pronouncing him guilty: and where that twelve have this constant admonition from the Bench, that if they have any fair, just, or reasonable ground to doubt, it is their duty to acquit!

But, still, they must have constantly before their eyes, the simple, solemn, and comprehensive oath they have just taken; viz. “You shall well and truly try, and true deliverance make, between our Sovereign Lord the King and the prisoner at
the

the Bar whom you shall have in charge, and a true verdict give according to the evidence. So help you God."

This oath has been transmitted to us from the remotest antiquity: it is in vain to calculate the age or origin of it. The language and the wisdom of it are infinitely beyond the frivolous productions of the present time.

They were not barbarians, when that oath was composed; they are, and will be, much worse than barbarians, when that oath is taken and violated with impunity.

Another law in favour of the prisoners is, that every Act of Parliament shall be construed strictly, that is, according to the strict letter, in favour of the prisoner. When a statute is ambiguously expressed, and will admit of two constructions, that construction shall be adopted which is most favourable to lenity and liberty. *Quoties dubia interpretatio libertatis est, secundum libertatem respondendum est*, is a law of the Twelve Tables of Rome, and also is one of the Laws of England.

It is safer that the Judge should discharge whom the Legislature intended to punish, than the Judge should punish whom the Legislature intended

intended to discharge with impunity. And if the Judge should not interpret the law to the extent the Legislature intended, the only inconvenience that results from it is, that the law in that instance only remains as it was, which the Legislature can easily remove by a subsequent Act of Parliament.

But this excellent law for the construction of Statutes, which is more ancient than any statute in existence, was intended to protect our lives, liberty, and property, by not leaving them *arbitrio boni viri*, "To the discretion of a good man;" for if they were left to the discretion of the best, they might also be left to the discretion of the worst of men.

This might be exemplified by innumerable instances; it pervades the whole Law of England; whether the offender is to be deprived of his life, or, in the slightest degree, of his liberty or his property.

By a statute in the first year of Edward the Sixth (c. 12), it was enacted, that if any one should steal any horses, mares, or geldings, he should suffer death without the benefit of Clergy. The statute having used the plural number, the Judges did not think it right to deny the benefit
of

of Clergy to him who had stolen one horse only, or one mare, or one gelding. And an Act of Parliament was passed in the next year, the 2d and 3d *Ed. VI.* c. 33. which made it a capital crime to steal one horse, gelding, or mare.

This is the first act of Parliament which punishes with death the stealing of any species of property. The reasons are obvious—the value of the article, and the facility of the commission of the crime, and the difficulty of the pursuit and the apprehension of the offender.

The stealing of no other animal was punished with death until the 14th year of George the Second, 1741; when it was enacted, (c. 6.) that if any one should *steal one or more sheep or other cattle*, he should suffer death, without benefit of Clergy. This was very carelessly expressed by the Legislature. The Judges did not know what construction to put upon "*other cattle*," to justify them to pronounce sentence of death upon a prisoner; and in the next year, the 15th *Geo. II.* c. 34, was passed, which enacts that the former statute shall extend to any bull, cow, ox, steer, bullock, heifer, calf, lamb, as well as sheep, and to no other cattle whatever.

So if a man steal any number of any other tame animals;

animals; as mules, asses, goats, swine, &c. the greatest punishment is only transportation for seven years.

But this rule of construing every thing strictly in favour of the prisoner, is not confined to Acts of Parliament, but extends to every legal record.

If one man strike another, who returns the blow, and the first striker kill him, he is guilty of murder. If he who is struck, kill the other, he is guilty only of manslaughter.

On an indictment against a man for the murder of his gardener, the Jury found a special verdict; and stated, that "the master struck the gardener, and the gardener struck the master, and the master gave him a mortal wound." The Judges would not determine that the master struck first, so as to make it murder; and yet, from the manner of finding, any one would be led to collect that the first blow was given by the master. *Str.* 1016.

There was no express averment that the master struck first; and it is an universal rule, that every thing shall be construed in favour of the life, liberty, and property of the accused.

Another rule of construction in favour of the
prisoner,

prisoner, is, that if a statute declare that the violator of it shall suffer death, if it does not add "without benefit of Clergy," he cannot suffer death for the first offence, or till he has had the benefit of Clergy for that or some other crime.

Two instances may be given;—the statute to prevent bigamy, 1 Jac. c. 11; and the statute to prevent buying and selling counterfeit money for less than its denomination imports, 8 and 9 Will. III. c. 26.

Each statute expressly declares, that the offender shall suffer death, as in cases of felony. But the Judges cannot pronounce sentence of death for the first offence against either statute, unless the prosecutor plead, and prove, that he has been convicted of some other single felony, and has received the benefit of the statute of *Queen Anne*, which is equivalent to the benefit of Clergy.

Another important law for the protection of innocence is, that no one shall ever be tried again for the same crime, whether he has been found guilty or acquitted. This is a great Constitutional barrier for the protection of innocence: it is said that the life and liberty of the subject shall not be put twice in danger: *Nemo debet bis vexari*.

If he could have been put twice in danger, he might have been put twenty times in danger, or till a jury could have been found wicked enough to have pronounced an innocent man guilty of the crime which he was falsely charged with.

Whenever an Englishman is charged with a crime, the record of it must be preserved for ever, and the charge must be drawn up with precision, according to legal forms. Forms are of the essence of justice, because they are absolutely necessary for the administration of justice. Without a strict adherence to form, endless confusion would be the consequence; and though the guilty frequently escape through a defect of form, yet the innocent are, by these forms, secured from the arbitrary discretion of the Judge.

Another instance of favour to prisoners, is, that the Judge must be counsel for them; that is, upon all occasions, he must be vigilant to observe that every proceeding against them is conformable to the rules of law. For justice in a court of law, is not justice unless it is administered according to law.

I may here illustrate this by an instance which lately came before myself within this Jurisdiction, and which some present will probably remember.

a

The

The prosecutor had a considerable quantity of money, in silver and copper, in a drawer: with this money there were also an old cankered iron seal, and a copper token.

All the contents of the drawer were missing together. Suspicion fell upon the prisoner, a boy, who was apprehended and searched: some money was found in his pockets, and the old seal and the copper token. The money found upon the prisoner could not be identified. He was indicted for stealing the seal and the token only. I told the Jury, that the Law of England did not regard articles of no real value; and if the seal and token together were not of the value of one farthing, they ought to acquit the prisoner, which they did—The seal was so cankered, that no one could tell what the impression had been. Any one, who had found it, would have thrown it away again; and I dare say every one thought that the token was not worth one farthing.

This acquittal, in the Jury and in myself, did not arise from any wish to favour the prisoner, who had committed a very serious crime; but it was the consequence of the ignorance of the person who drew the indictment, who had not charged the prisoner with stealing all the money in the drawer,
together

together with these trifling articles, or without them: then I should have told the Jury, that as they were all together, and missed all together, it might be fairly presumed that he who took the seal and the token also took the money; and if they were of opinion that he had stolen them, they might also have found him guilty of stealing the money.—The verdict they found did not preclude such an indictment for stealing the money.

The observations I made to the Jury having occurred to my mind, I was under every obligation of law, religion, and morality, to state them to the Jury: for even what may be thought moral justice, when not authorised by the law of the land, though administered by a public magistrate, is an act of arbitrary power, and might with far less dangerous consequences be administered by any other man.

So far every Court of Justice is bound to be counsel to the prisoner, from the lowest to the highest; from the Court of Quarter Sessions, to the Court of the Lord High Steward, or the High Court of Parliament.

Another favourable law to all prisoners is, that their confessions cannot be received against them, if any threat or promise has been held out to them before their confession was made; because it has

been thought, that a man might be frightened by a menace, or seduced by a promise, to confess himself guilty of a crime, of which he was perfectly innocent.

Another reason may be assigned with respect to the promise; viz. that as one great object of all law is to produce honesty and good faith, the proceedings in a court of law ought to be conducted with the most perfect purity; and the administration of justice ought never, in any degree, to exhibit an example of injustice or bad faith.

And another reason also may be given, to preclude the confession extorted by the threat: for it would be irreconcilable with the gentle and benign spirit of the English Law, which never, as in many other countries, admitted torture, or the rack, to be applied to the accused.

Such a horrid instrument has been fabricated in this country, and, by some tyrannical Ministers of the Crown, was attempted to be used; but it has long been exhibited, in the Tower, with the monsters which are foreign and unnatural to the mild climate and region of Great Britain*.

And

* The Common Law knew of no such engine of power as the rack, or torture, to furnish the Crown with evidence out of the
the

And even when a prisoner has made a voluntary confession or declaration of his guilt, where no threat or promise has been held out, the Court will direct the Jury to acquit the prisoner, unless it is confirmed by some other material evidence.

The reason is, that the confession might have been made wantonly, or from some motive inconsistent with the purposes of public justice*.

There

the prisoner's mouth, against himself or other people. It was, as Lord Coke informeth us (3 *Inst.* 35.), first brought into the Tower by a great Minister, in the time of Hen. VI. "*directly,*" saith he, "*against law, and cannot be justified by any usage.*"

When Felton, upon his examination at the Council Board, declared, as he had always done, that no man living had instigated him to the murder of the Duke of Buckingham, or knew of his intention; the Bishop of London said to him, "If you will not confess, you must go to the rack." The man replied, "If it must be so, I know not whom I may accuse, in the extremity of the torture; Bishop Laud perhaps, or any Lord at this Board."

Sound sense, in the mouth of an enthusiast and a ruffian!

Laud having proposed the rack, the matter was shortly debated at the Board; and it ended in a reference to the Judges, who unanimously resolved, that the rack cannot be legally used. *Foster.* 244.

* A gentleman's house had been broken open at Manchester, and a quantity of plate was carried away. A man afterwards, at an alehouse, declared he was the person who had committed the crime. He was apprehended, and searched, and a pick-lock key was found in his pocket.—Upon his trial at

[Lancaster,

There are several other provisions introduced, by various Acts of the Legislature, to protect the innocent from oppression, when they are charged with high treason; but it is not necessary to enumerate them here.

But all the excellent laws which I have mentioned, and which are all so highly favourable to mercy, lenity, and liberty, or to the protection of the innocent, are rules of the Common Law, and therefore are more ancient than Magna Charta, or any statute in existence.

It is a most erroneous opinion, arising from a great ignorance of the principles of the English Law, and from a misrepresentation of facts, that prisoners have so many chances to escape punishment, in consequence of the severity of it. The guilty in all times have had a chance of escaping unpunished, by every one of the laws I have enumerated; and these laws have no regard whatever to the extent of the punishment, but are equally applicable to all crimes, whether they are the lowest or the highest—petty larceny, or murder, or high treason.

These

Lancaster, Judge Rook did not think the pick-lock key was a sufficient confirmation of his confession; and he directed the Jury to find him not guilty, which they did accordingly.

These great Constitutional Laws, which permit so many criminals to escape unpunished, were calculated to protect the innocent from unjust accusations, and undeserved punishments, in courts of justice; but they seem to have left the innocent far too defenceless in their homes, in the possession of their property, and in the general intercourse of life, against the dangers and depredations of the guilty.

Our political liberty is at variance with our civil liberty: the more we have of the one, the less we must have of the other. Our jealousy to protect ourselves from legal oppression and arbitrary power exposes our lives and property to the attacks of domestic plunderers.

The people of England have always manifested a far greater dread of tyrants, than of robbers and murderers.

But if we trace the history of crimes in England, we shall find that good morals supplied the place of severe laws; and we now punish with death, in innumerable instances, crimes which had no existence whatever in our ancient laws; but which the wicked inventions, and the licentious practices of modern times, rendered it
indis-

indispensably necessary that the Legislature should repress with severe and exemplary punishment.

By the ancient law of this country, arson, or the burning of dwelling-houses, was the only species of destruction of property which was subject to any punishment whatever.

It was no legal crime whatever to destroy by fire, or water, or any other means, the most valuable property. The offender was only compellable to make satisfaction, in damages, to the owner; to be recovered in a civil action. It was no legal crime to set fire to barns, or stacks of corn or hay; or to maim or kill another's cattle. Yet these crimes are much more atrocious than theft; the motive is of a far more malignant nature; the injury to the owner may be more extensive than any theft; and this species of crime produces a total loss to the public: whereas, in theft, the thing is still of equal benefit to the public, whether it be in one hand or in another. But these were all made crimes in the last century, long after the Revolution.

Many think that nothing is wise or good in our laws, or government, unless it has been introduced since

since the Revolution: because that did much, it is thought to have done every thing. It firmly established the Protestant Religion; and in its consequences, by the Act of Settlement, the present Royal Family were placed upon the throne of this kingdom.

May heaven, in its infinite goodness and wisdom, decree that these blessings may be indissolubly united, in *sæcula sæculorum*—for ever and ever!

By the celebrated Bill of Rights, many excellent laws were introduced, to secure and confirm the liberties of Englishmen; but there is not one word upon the punishment of felonies, which is the subject that is now so much under discussion.

By abolishing for ever the King's pretended power to dispense with a statute which introduced a penalty to be recovered by an action, it increased, or confirmed, the severity of the existing and future laws.

Indeed, there could be no reason, at that time, to complain of the severity of the criminal law: for in the reign of Edward the Sixth, there were only five crimes which were punished with death; viz.

Treason,

Treason, Murder, Robbery, Arson, and Horse-stealing. Rape was not then a capital crime, but it was first made so by a statute in the reign of Elizabeth (18 *Eliz.* c. 7); and the whole number of capital crimes, at the time of the Revolution, scarcely exceeded half a score*.

Forgery, at that time was, in all cases, only a misdemeanour, like any other fraud, or obtaining money or goods by a false pretence: every statute to make it a capital crime, in the instance specified in the statute, has been enacted since the Revolution. Where there is no Act of Parliament to punish it with death, then forgery, in that case, is only a misdemeanour by the Common Law.

It was no legal crime whatever, before the second year of his late Majesty's reign, to steal any Bank notes, bills of exchange, or any paper instrument; when, by 2 *Geo.* II. c. 25, it was enacted, that if any one should steal, or take by robbery, any bond, bill, note, &c. he should be guilty of the same crime as if he had stolen or taken by robbery goods of the like value with the money due upon them.

Hence

* See the progress of the Criminal Law, in the last chapters of the first volume of Lord Hale's *Pleas of the Crown*.

Hence it follows, that to steal from any Country Banker, or even from the Bank of England itself, 10,000*l.* of their respective notes, finished ready to be put into circulation, or which have been in circulation, is no crime whatever; because there is no money then due upon them. That case is not within the statute: it is just the same as if the statute had not existed. All that the Country Bank or the Bank of England can do, would be to bring an action to recover damages from the offender.

By the 15th *Geo.* II. c. 13. if any servant of the Bank shall steal any bill, bond, deed or security, or effects, he shall suffer death, without benefit of Clergy.

Aslett, a confidential servant of the Bank, stole Exchequer bills to the amount of 300,000*l.* Being a new security, they were not named within the statute; and the Exchequer bills, which he stole, had not been indorsed by the Auditor of the Exchequer. In consequence of that omission, all agreed that they were not legal instruments, upon which any action or suit could be maintained; and it was contended that these were not securities or effects under the statute. A majority of the Judges thought they were; as the Government was bound to pay them, in honour or moral justice.

justice. But the number and learning of the dissenting Judges were such, that, from respect to them, this extraordinary offender was never executed. The Judges were not in the slightest degree influenced in their judgment, because the punishment was death: they would have reasoned and would have decided in the same manner exactly, if the punishment had been only one month's imprisonment. 1 *Bos. & Pul.* 1.

So, to steal growing corn, to set it on fire, or to destroy it in any manner whatever, has never been a crime by the Law of England: all that the owner can do, is to compel the offender to make him a compensation in damages*. Or, if any one should come into your house, and should throw all your books, papers, or Bank-notes into the fire, or should in any other way destroy them, he is guilty of no legal crime whatever, and is subject to no legal punishment.

This case has occurred at the Old Bailey. A man was indicted for stealing three odd volumes, of the value of 40s. from a dwelling-house. It was proved that the three volumes, as part of the work, were of

* For stealing it, a statute was made, the 43 *Eliz.* c. 7. which enacts that a Justice of the Peace may order the offender to make satisfaction; and if he cannot immediately pay, he may order him to be whipped.

of much greater value than 40s. to the owner, or the value of the whole work was diminished by much more than that sum; but no one, except those who wanted the three volumes to complete their set, would give that money for them.

The learned Judges present decided that they were of the value of 40s. within the meaning of the statute; and, therefore, that he who so stole them was guilty of a capital crime.

I am obliged to differ from the learned Judges, for the following reasons: If the prisoner had burnt the whole, he would have been guilty of no illegal crime whatever; if he had taken the three, and had burnt the rest, then he had not stolen what was worth 40s. to any person.

The statute was not intended to punish mischief, but to counteract the temptation of stealing property in a dwelling-house, which the offender had a certain or a great expectation of turning to his private advantage, to the amount of 40s. or to a much greater extent.

For these reasons, as the law has not been decided by the twelve Judges, I should consider the case not to be within the statute, and that
such

such a crime is only simple grand larceny, and punishable by transportation, whipping, &c.

Is it possible then to say, that these are laws, like Draco's, written in blood? If we were asked what is the reason that so many wicked actions in ancient times, or, still, in the present times, were or are not subject to any punishment, the answer is, that retribution, or private satisfaction, was sufficient for the prevention of them; or we may answer, with Solon, the Athenian Legislator, who, when he was asked why he had provided no punishment for parricide, answered, that he thought that no one would ever be guilty of such a crime. And Cicero tells us, that he was said to have acted wisely, in not having provided any punishment for what had never been committed; lest, by prohibiting a crime, he should be thought to teach it, or to put men in mind of it—*Ne non tam prohibere quam admonere videretur**.

We have no punishment for parricide, or the murder

* “ Prudentissimæ Atheniensium civitatis sapientissimum Solonem dicunt fuisse, eum, qui leges quibus hodie quoque utuntur scripserit. Is cùm interrogaretur cur nullum supplicium constituisset in eum qui parentem necasset, respondit, se id neminem facturum putasse. Sapienter fecisse dicitur, cùm de eo nihil, sanxerit, quòd antea commissum non erat, ne non tam prohibere quam admonere videretur.” *Cic. pro Roscio.*

murder of a parent, distinct from that of the murder of any other person.

So, till lately, we had no punishment for plagiarism, or stealing children, except as for false imprisonment; and, now, the greatest punishment is transportation for seven years. The punishment may be the same that can be inflicted upon grand larceny, which punishment, experience proves, does not prevent the commission of the crime.—See 25 *Geo. III. c. 101. An Act for the more effectual prevention of Child Stealing.*

But I shall explain to you two laws, to repeal which Bills have passed frequently through the House of Commons, without opposition; and which, I think most fortunately for the public safety, have been rejected in the House of Lords.

By the ancient law, every species of grand larceny, that is, a theft of any article above the value of one shilling, was punished in the same manner; viz. the offender, if he had the benefit of Clergy, was burnt in the hand, and might be imprisoned not more than a year.

By the 4 *Geo. I. c. 11.*, burning in the hand might be changed into transportation for seven years; and by the 19 *Geo. III. c. 74.*, may be changed

changed into a fine, and whipping not more than three times.

So, for every species of grand larceny, not capital, the Judge may, at his discretion, inflict any of these punishments.

But there were several kinds of theft, which were frequently committed, and which were much more injurious to the owners of property : these the Legislature has declared shall be punished with death, or they have taken away the benefit of Clergy from the offender. To steal a horse was made a capital crime in the first year of *Ed. VI.* ; but to steal a flock of sheep, or a drove of cattle, could not be punished with death till the 14 *Geo. II. c. 6.*

To steal privately out of a shop, any goods to the amount of five shillings, was made a capital crime by a statute made in the 9th and 10th year of *William III. c. 33.* To steal any property out of a dwelling-house, to the value of forty shillings, was made a capital crime in the 12 *Ann. c. 7.*

There must be a limit ; and though, in these two statutes, the limit is five shillings, and in the other forty shillings, the law was intended to prevent thieves from taking all that they could
 carry

carry away at once, it might be 5000*l.* or 40,000*l.*

We have a late remarkable instance, when a thief contrived to steal privately out of a shop, goods to the amount of 22,000*l.* from Rundell and Bridge, the great jewellers. The words of the statute are "*privately stealing*;" and the Judges have put upon them this construction favourable to the prisoner, that it is not privately stealing if the theft be seen, heard, or in any way perceived at the time; because it then may be prevented, and the loss perhaps cannot be very great; and this was probably the intention of the Legislature, by using the word *privately*.

The person who carried off the jewels from Rundell and Bridge must have been guilty of privately stealing; for the theft was not only not perceived at the time, but was not suspected till some days afterwards; when suspicion was excited by the thief not coming for the sealed box, as he promised.

What security then could any tradesman have in his property, if the law were relaxed, when a theft to such an immense magnitude can be committed with success, under the existing law?

Such a loss would have brought many tradesmen to irretrievable bankruptcy and beggary. Surely the punishment of death is not too severe for so heinous a crime!

It has been said by high authority, "The bread of the needy is their life: he that defraudeth him thereof is a man of blood." *Ecclesiasticus*, xxxiv. 21.

The other statute is the 12 *Ann.* c. 7. which was intended to protect all the property we have in our houses from depredations which might be committed by our servants, or by any other persons in a confederacy with them; and so the statute declares in the preamble. Burglary has long been punished with death; but there are a thousand robberies in dwelling-houses which cannot be proved to be burglary, because they cannot be proved to have been committed in the night-time: for if they break in, or break out, one hour after sun-set, or one hour before the rising of the sun, it is not burglary. If we were not protected by this statute, many hundred or thousand pounds' worth of property might be taken away at once, and the offender would only be subject to transportation for seven years.

I live in a solitary house myself, in the country, and am frequently obliged to leave my family there:

there : and when my family go with me, we necessarily leave much valuable property to the care of servants.

I have all the precautions of dogs, fire-arms, lights, and bells ; but I know, Gentlemen, by experience, as many of you must do, the frequent alarms and anxieties which every occupier of a solitary house must feel for his family, himself, and his property.

Besides, if this statute were ever repealed, (which Heaven forbid !) I am convinced that the lives of far more human beings would cease to exist, far more murders would be committed, and far more executions would be the consequence. Every one who comes to take away another's property, is provided with fire-arms or dangerous weapons, which he would use to prevent discovery or to effect his escape*.

But it is said, that not one in a thousand suffers death

* Every respectable farmer and tradesman must have in his house property to the value of some hundreds, which thieves could carry away at once :—noblemen, and families of opulence, to the amount of many thousands.

Every well-dressed woman must have ornaments to her person, which would allure thieves from a great distance. Even the marriage-ring is too valuable to be left behind ; and the more reluctantly this pledge of love and fidelity was parted with,

death for these crimes. So much the better. It proves the crime has not been committed with circumstances of terror or aggravation.

The law is just what that great man Cicero has recommended, that the punishment should fall upon a few, but all should live under the apprehension of it:—" *Ut pœna ad paucos, sed metus ad omnes perveniat.*"

And both these laws are agreeable to another sentiment of his: That crimes ought to be punished with severity, in proportion to the difficulty that we have in preventing them by precaution:—" *Ea peccata animadvertenda maxime, quæ difficillime præcaventur.*"

In the statute to prevent stealing out of a dwelling-house, the Judges have put this merciful construction upon it, — that property to the amount of 40s. must be stolen at once.

A butler with, the greater danger would accrue to the life of the innocent wearer of it.

For the protection of the lives of those whom every man ought to protect with more anxiety than his own, I never go to sleep, in my own house in the country, without having a brace of double-barrelled pistols, loaded with ball, within my reach. If we diminish the terror of house-breakers, the terror of the innocent inhabitants must be increased, and the comforts of domestic life must be greatly destroyed.

It is surely hard enough that we should be driven to the balance of such evils as we are at present compelled to endure.

A butler was found in possession of wine to the amount of more than 100*l.* value, which was proved to be his master's property. It was held right that the Jury should acquit of the capital charge, because he very probably might steal only one bottle at a time.

Any number of petty larcenies will not make one grand larceny; nor any number of grand larcenies, a capital felony.

If I were asked what is the most important and valuable Act of Parliament in the whole Statute-book for the protection of the property and lives of all of us, I should, without hesitation, say the 12th *Anne*, c. 7, which makes it a capital crime to steal 40*s.* in a dwelling-house. In other instances of theft, as horse-stealing and stealing cattle, the owner of them will never be personally present; his life is not put in danger: but the owner, or some of his inmates, must always or generally be near the property which is intended to be taken in a dwelling-house; and whatever was the punishment, the thief would not hesitate to murder, to secure his booty, and to effect his escape.

The most wicked of mankind do not take a pleasure in committing murder; but they are driven to the commission of it, to secure the
success

success of another crime. This was the cause of the late shocking murders, at Pendleton near Manchester, at Greenwich, and at Godalming.

Besides these advantages, this excellent Act of Parliament secures all the property in shops, when shops are part of the dwelling-house.

It was a capital crime to steal guns and pistols worth 40s. from Mr. Beckwith's shop, on Snowhill; but it was not so to steal them from the shop in the Minories, because that shop formed no part of a dwelling-house.

In the time of Queen Elizabeth (8 *Eliz.* c. 4), it was made a capital crime to steal any money or property, amounting to grand-larceny, privily from the person of another. The object of this was, to protect those who were obliged to go into public markets, fairs, or churches; that tenants, who had rent to pay, landlords rent to receive, and all others who were obliged to carry money and valuable property along with them, might have a greater security from the law. This statute was lately repealed, by 48 *Geo.* III. c. 129; and the punishment is now transportation for life, or any less time. Since the capital punishment was taken away from this crime, it has increased in London to a most
alarming

alarming extent, as every one connected with the Police of London can testify*.

Whatever may be the cause of the increase of crimes, this may serve as a lesson, that we shall not diminish them by diminishing the present severity of the law, as it is now mildly and wisely administered.

That relaxing statute must have multiplied crimes of every description; for though, amongst criminals, there may be something of the division of labour—as each will have more adroitness and dexterity in confining his practice to his own line—yet, when business is slack, or that branch is overstocked, he will have no great difficulty in turning his hand to some other more promising pursuit.

We constantly hear, that if you punish these crimes with death, murder costs nothing; and that the law is the general rule, and the punishment the exception.

These puerile epigrammatic conceits amuse the
thoughtless,

* There is never a crowded place of worship, but a number of pickpockets are now seen there; and, horrid to relate, they commit their crimes even at the most solemn part of the divine service!

thoughtless, and furnish them with something to say; but to offer them as reasons or arguments to men who think seriously and correctly upon the subject, is to attempt to muzzle a lion with a cobweb; or to stop the progress of an elephant with a feather.

Those who complain of the severity of a capital punishment, always speak of it as if there was no medium between death and impunity.

Transportation for life is generally the condition upon which a reprieved convict is recommended to the clemency of their Prince Regent; but that is a punishment which cannot be inflicted by any statute, except the 48th *Geo. III.* c. 129. the present statute to prevent stealing from the person.

But that, as a statutable punishment, has been found, by eleven years' experience, quite inefficient to prevent the increase of that crime.

It is said, that the terror of death has lost its efficacy. It may be so, perhaps, upon the minds of the most hardened and reprobate; but it surely must have great influence and operation upon the minds of those who are beginning to swerve from rectitude, or who have not arrived at the last stage of desperation.

If

If there were a law proclaimed, that every person who entered Hyde Park on a Sunday should leave his or her name on a card, and, as soon as ten thousand were received, that one should be drawn out by lot, and that person, male or female, should be shot or otherwise put to death, few, I should think, would take a ticket in such a lottery; and it would be long before the subscription would be filled.

In the preamble to the 1 *Ed. VI.* c. 12. which repealed many of the severe laws passed in the reign of his father Henry the Eighth, we find the following beautiful simile:

“But as in tempest or winter, one course or garment is convenient, in calm or warm weather a more liberal case or lighter garment both may and ought to be followed and used: so we have seen divers strait and sore laws, made in one Parliament (the time so requiring), in a more calm and quiet reign of another Prince, by the like authority, repealed and taken away.”

But it is much to be apprehended that we are far distant from that calm or warm weather, when we may safely put off the garment which the tempest has rendered indispensably necessary.

The

The late Chief Justice of the King's Bench was equally distinguished in the Senate as upon the Bench. His death must be long deplored, as a national loss. He brought in an Act of Parliament, which introduced the punishment of death in five instances; four of which were only misdemeanours before, and in the fifth the law had provided no punishment whatever. It is remarkable that I have never yet heard any one even murmur an objection against this excellent statute.

By the law of England, *voluntas reputatur pro facto*; or, that "the will is to be considered as the deed;" is never applied to felonies. The attempt therefore to commit a felony is only punished as a misdemeanour, by fine, imprisonment, and whipping.

If a man intends to commit a murder, and he beats another with a hedge-stake or with an iron bar, and he leaves him under the belief that he has killed him, still, if he recover, the criminal can now only be punished as for a misdemeanour. In all misdemeanours, the extent of the punishment by the antient common law is left to the discretion of the Judge or Court, who can proportion it to the progress of the criminal in his wicked design. Hence, there

there is wisdom in not punishing the attempt to commit a crime to the extent of punishment inflicted upon the full perpetration or consummation of it, for the offender has some inducement to desist from his wicked purpose; for whilst there is *locus pœnitentiæ*, or a place for repentance, there is a *præmium pœnitentiæ*, or a reward for repentance, in the mitigation or diminution of the punishment.

The following words of Solomon are particularly applicable to this subject:—"But executing thy judgments upon them by little and little, thou givest them place of repentance." *Wisdom of Solomon*, xii. 10.

But when the crime is not fully completed, not from the remorse and compunction of the offender, but from the interposition of Providence, there is just as much reason or wisdom in punishing the attempt with death, as the full perpetration of the crime; in order to prevent such attempts in future, by which murder will probably be the consequence. Lord Ellenborough therefore, in my opinion, wisely, and consistently with the best principles of justice, carried through a statute, which enacts that an attempt to murder by stabbing or cutting, by attempting to discharge loaded fire-arms,

arms, or by poison, should be punished as if the crime of murder had been fully accomplished.

An attempt to procure an abortion where the mother is quick with child, is now a capital crime, that before was not more than a misdemeanour. If the mother be not quick with child, the attempt is then felony, and the punishment may be transportation for fourteen years.

By the antient law, and till this statute, if a tenant burnt down a house, of which he was tenant, though his lease expired the next day, he was guilty of no crime whatever. His landlord could recover satisfaction in damages; but though the house was burnt down through express malice towards him, he could not prosecute his tenant for a legal crime*.

But by Lord Ellenborough's Act, if any person shall set fire to a house, mill, &c. whether in his possession or not, with intent to injure or defraud any one, he shall be guilty of felony without benefit of Clergy.

This

* If a man burn his own house in a town, or attempt to do it, he is guilty of a misdemeanour, without an intent to defraud or to injure any one but himself.

This is the natural progress of wicked actions, by the Law of England. The law, at the first, compels the offender to make retribution or compensation: if that be not sufficient, the Legislature creates the injurious action a legal crime, as a misdemeanour, or a felony of a lower degree; and if that is still not sufficient to restrain such wickedness, they are obliged to make it a felony of the highest degree, or felony without the benefit of Clergy.

In the case of a tenant burning his own house,—as the instances of persons burning their own houses, to defraud the Insurance-offices, had become so numerous,—Lord Ellenborough and the Legislature thought it right to raise the trespass into a capital felony at once.

This statute increased the severity of the criminal law in a greater degree than any statute that ever passed through the two Houses of Parliament; yet no one can say, that it is not consistent with the best principles of morals or religion. I have stated one case of an attempt to poison, tried before myself.

Upon the clause to discharge loaded fire-arms, this case occurred:—A man called at a gardener's house: the gardener and his wife were at supper, and

and they very hospitably requested him to partake with them : he soon afterwards drew out a pistol and demanded their money : they both rushed upon him, and, in the scuffle, he attempted to fire his pistol at them twice, but each time it missed fire. They succeeded in apprehending him : he was tried, convicted, and executed.

If this statute had not passed, his crime would have been an attempt to rob, for which he might have been transported for seven years*.

For the prevention of murders, it is as necessary that such an offender should suffer death, as if the murder had been fully consummated. When loaded fire-arms miss fire or flash in the pan, it is, by an act of the Almighty, not expected, or wished for by the criminal, that the life of the party aimed at is preserved.

It is now a very fashionable doctrine, that certainty of punishment is much more efficacious than the severity of punishment.

I have

* This, like all other attempts to commit a crime, was a misdemeanour by the common law : but by a statute passed 7 Geo. II. c. 25. if any one shall, with an offensive weapon, make an assault, or by menaces demand money or goods, with intent to rob, he shall be guilty of felony, and shall be liable to be transported for seven years.

I have never seen any where an explanation of what is meant by a "certainty of punishment." To this may be applied the maxim, that *Dolus et Ignorantia semper versantur in generalibus*: Design and Ignorance always deal in generals, or, general propositions. Ignorance deceives itself, by supposing them the effusions of wisdom; and Design uses them to delude and impose upon Ignorance, and, as far as it is able, upon the unthinking, and upon the rest of the world.

If we consider the subject, a certainty of punishment will admit of two interpretations. The one is, that every crime that is committed shall be certain to receive some punishment; and the second, that whatever punishment is denounced by the law, when the offender is discovered, that punishment, without diminution or mitigation, shall invariably and certainly be inflicted upon the criminal. These are the only two meanings which I think the words "certainty of punishment" can bear.

In the first instance, if men were sure that as often as they stretched out their hand to commit a crime it would be struck off by a sword, or they would be struck dead by a thunderbolt, then the laws would be obeyed, and all crimes would be effectually prevented. But how is that to be

accom-

accomplished? Let the punishment be what it may, crimes will be committed in secrecy and in darkness, where the criminal supposes that all witnesses are absent, or that he is unknown, and that no circumstances will afterwards prove to a Court of Justice, or to his countrymen, that he was the person who committed that criminal or wicked action. "Men love darkness rather than light, because their deeds are evil." Under all Governments, and in all ages, criminals have hoped to escape from punishment, by eluding detection and apprehension; and all that the best laws can do, is, to diminish that expectation in the greatest practicable degree; and to convince the people, that honesty is the best policy, and that dishonesty is the worst; or that every species of crime, if not to an absolute certainty, will, to a high probability, lead to a punishment, and to shame and misery*.

The

*The description which Juvenal has given of the hopes which the wicked indulge of escaping from divine punishment, is equally applicable to the expectations of criminals with respect to punishment from human tribunals :

"Ut sit magna, tamen certe lenta ira Deorum est.

Si curavit igitur cunctos punire nocentes,

Quando ad me venient? sed et exorabile Numen,

Fortasse experiar : solet his ignoscere : multi

Committunt eadem diverso crimina fato ;

Ille crucem sceleris pretium tulit, hic diadema."

The other interpretation of the certainty of punishment is, that whatever punishment is denounced by the law, and whenever an offender is found guilty by the Jury, the punishment shall be invariably inflicted. This mode of administering justice, when it is seriously considered, would be cruel in the highest degree.

We never can define any crime, but there must be a wide and immense difference in the extreme cases of that crime. If, from some little disappointment or peevishness, I should strike my servant, or any one, with a pen or a feather, I am guilty of an assault and battery; and if I were prosecuted for it, I should plead guilty; and I should be admonished by the Judge, or the Justices at Sessions, to restrain my anger in future, and should probably be fined sixpence and discharged. But if another should beat a man with a hedge-stake, or an iron-bar, with an intent to murder him, and leave him, as he supposes, dead; if the person injured recover, still the criminal, in that case, is only guilty of the same species of crime that I committed by striking with a feather.

So, also, all conspiracies or combinations to do an illegal act, are misdemeanours by the common law.

law. But there is an infinite difference in the circumstances under which they may be committed.

If two or more young men resolve to go to the Play to make a riot, to induce the Manager to lower his price; or to beat or horsewhip some one who had offended them: and though they think better of it, and desist from their illegal purpose; still, if their joint resolution could be proved, they are guilty of a conspiracy, and, if convicted, would be subject to some trifling punishment.

But if a number of men resolve to murder another, and they do not desist from their diabolical purpose from any remorse or repentance, and their purpose is frustrated and his life is saved by the interposition of Providence, still it is the same crime with that which I have just described.

The one may be punished by the fine of one penny; and the other will be mercifully treated by any extent of punishment to which the Judge, in his discretion, shall think fit to proceed. Sir James Mackintosh, when he was Recorder at Bombay, ordered several offenders in such a horrible case to be imprisoned each five years,
and

and in each year to be twice publicly whipped; and also to stand, once in each year, in the pillory; and each to pay a fine of ten thousand rupees, and to be imprisoned till the fine was paid:—a sentence, which every one must think not too severe for so horrid a crime*

The punishment for misdemeanours by the common law, as in these cases, was always left to the discretion

* “On November 17, 1810, at a Sessions of Oyer and Terminer, and General Gaol Delivery, held before Sir James Mackintosh, Recorder of Bombay, three Native Servants in the Treasury were convicted, on the clearest evidence, of a conspiracy to murder George Osborne, Esq. the present Sub-Treasurer; and sentence was passed on them, for five years imprisonment; during which period they are to be annually exposed in the pillory, twice publicly whipped through the bazar, and each to pay a fine of ten thousand rupees; and to be further imprisoned till the said fine be paid.”—*Asiatic Ann. Reg.* for 1810, p. 141.

The circumstance of the case are not stated in that volume of the *Asiatic Ann. Register*, and I do not know where to refer the reader to them; but I have read or heard, that these Native Clerks had embezzled the public money to a considerable amount; and as often as there was an audit, they borrowed so much of the merchants, to replace it—so that no deficiency appeared. Mr. Osborne, suspecting this, took such measures, that they had not an opportunity of taking it back again; in consequence of which they laid a plan to murder him, which horrid conspiracy was providentially brought to light, and the offenders suffered the punishment commensurate to their shocking crime.

discretion of the Court of King's Bench, the Judge at the Assizes, or the Justices at the Sessions, provided it was confined to fine, imprisonment, whipping, or pillory.

The last was an excellent species of punishment for crimes of a flagitious nature; but it was shocking to the delicacy of the present times, and, I think, has, unfortunately for public justice, been abolished, except in the cases of perjury and subornation of perjury. It was useful, to give the people an opportunity of shewing their detestation of crimes: and the lives of the criminals might easily have been saved, by iron bars placed round the machine.

By the 56 *Geo. III. c. 138.* the punishment of the Pillory is abolished in all cases, except for perjury, and the subornation of perjury. Fine and imprisonment, one or both, may, in every case, be substituted for it. Experience has shewn that this statute, in administering justice to restrain the demoralization of the people, may be regarded as a heavy calamity. Criminals, guilty of flagitious crimes, and of conspiracies worse than perjury, now fill our prisons for many years, and will be let loose upon society, with no more infamy than if they had been imprisoned for debt. Surely, in this instance, we have not inherited the wisdom
our

our forefathers possessed long before the House of Commons had existence.

But in all felonies, whether they are without benefit of Clergy, or have the benefit of Clergy, that is, whether they are capital or not capital, there must be an infinite difference in the circumstances under which each felony or each crime may be committed.

As if we take Burglary—it is defined to be, The breaking and entering into a dwelling-house in the night-time, with an intent to commit a felony. If a poor boy, urged by hunger, take out a pane of glass in the night-time, and endeavour to reach, with his hand, or a stick, a penny loaf, which he cannot accomplish, he is guilty of the crime of burglary. If another man, or number of men, drive in the doors or windows of a house with a sledge hammer, and knock down every one they meet within the house, and leave them apparently dead, and carry away 20,000*l.* worth of property, still it is the same crime as was committed by the poor boy.—Surely he ought not to be punished to the same extent as those who have committed the crime of burglary under such horrible circumstances ! *

Summum

* See how Lord Eldon and Lord Ellenborough have treated this subject in the next Chapter,

Summum jus est summa injuria, was a Roman proverb * : “Extreme right, is extreme wrong;” that is, the extremity or excess of legal right, or legal justice, is the extremity or excess of moral wrong, or moral injustice.

All laws, and perhaps criminal laws most of all, ought to be construed by equity, or by a discretion placed in the hands of wise and good men, to relax and remit the severity of the law. Whatever was the punishment of the law, if it were equally inflicted in the most heinous and the most lenient cases, great cruelty would be the result—we should all be involved in republican gloom, melancholy, and sadness. The elegant historian Livy, having finished his relation of the expulsion of the Roman kings, makes the friends of the monarchy thus bewail their situation, in language and sentiments which, no doubt, were his own.

“The king was a man from whom you might obtain, by petition, what was right, and even what was wrong : with him there was room for favour and for kindness : he had the power of shewing his displeasure, and of granting a pardon ; he knew how to discriminate between a friend

* In Terence it is, “*Summum jus est summa malitia*.” The word *malitia*, probably, better suited his verse.

friend and an enemy. The laws were a thing deaf and inexorable, more favourable and advantageous to the weak than to the powerful: they admitted of no relaxation or indulgence, if you exceeded their limits. Where men are under so many liabilities to make mistakes, or to fall into an error, innocence itself could not live in safety †."

No crime can be so described or defined, but circumstances may arise which may be a ground for appeal to this equity, or a recommendation to mercy, or a mitigation of the punishment. Even the foulest crime committed by the foulest means, even murder by poison, may admit of pity and compassion for the criminal. A Roman author, Aulus Gellius, has preserved a memorable instance of it.

When

† " Regem hominem esse, a quo impetres, ubi jus, ubi injuria opus sit: esse gratiæ locum, esse beneficio; et irasci et ignoscere posse: inter amicum atque inimicum discrimen nosse. Leges rem surdam, inexorabilem esse, salubriorem melioremque inopi, quam potenti: nihil laxamenti nec veniæ habere, si modum excesseris: periculosum esse, in tot humanis erroribus solâ innocentia vivere." *Liv.* lib. ii. c. 3. What the author means by "*in tot erroribus*," I do not find explained in the edition from which I copy this: whether it means, that an innocent man may be mistaken for the guilty man, by the witnesses, or that innocence may fall into delinquency, I must leave it to the learned reader to judge for himself.

When Dolabella was Proconsul of Asia, a lady of Smyrna was brought before him, charged with having poisoned her husband, and his son by another wife. She was a widow, and had a son, a youth of most amiable manners and of an excellent disposition: she married again, and her second husband and his son basely murdered her son: she, in the excess of her grief, revenged herself by poisoning them both: she confessed the crime, and her cause for committing it was admitted to be true. The Proconsul laid the matter before his Council, who declined to give an opinion in so doubtful a case: he then referred the cause to the members of the Areopagus, as men of greater gravity and experience; and when they heard it argued, they ordered the lady and her accuser to appear in court that day one hundred years afterwards.

The author proceeds to observe, that the lady, by this judgment, was not acquitted of this murder by poison, which the laws did not allow; nor, though she was guilty, but deserving of a pardon, was she condemned and punished*.

But

* The learned reader would, probably, prefer the perusal of it in the original:—"Ad Cn. Dolabellam proconsulari imperio provinciam Asiam obtinentem deducta mulier Smyrnæa
est:

But how infinitely better would this have been conducted by the English law. The Jury would have found her guilty; the Judge would have pronounced sentence of death, and would then have recommended and reported the circumstances of her case to the King; and he, with his Privy Council, would have formed the Areopagus, whose wisdom and justice, seasoned with mercy, would have given an equitable judgment in favour of the unfortunate woman, which, probably, would have given satisfaction to the whole world.

A few years ago, a man infested and terrified, in the night, the village of Hammersmith, under
the

est: eadem mulier virum et filium eodem tempore venenis clam datis vitâ interfecerat, atque id fecisse se confitebatur; dicebatque habuisse se faciendi causam, quoniam idem illi maritus et filius alterum filium mulieris ex viro priore genitum adolescentem optimum et innocentissimum exceptum insidiis occidissent, idque ita esse factum controversia non erat. Dolabella retulit ad consilium, nemo quisquam ex consilio sententiam ferre in causâ tam ancipiti audebat; quod confessum veneficium, quo maritus et filius necati forent, non admittendum impœnitum videbatur, et digna tamen pœna in homines sceleratos vindictum fuisset. Dolabella eam rem Athenas ad Areopagitas, ut ad iudices graviores exercitatoresque, rejecit. Areopagitæ cognitâ causâ accusatorem mulieris, et ipsam, quæ accusabatur, centesimo anno adesse jusserunt; sic neque absolutum mulieris veneficium est, quòd per leges non licuit; neque nocens damnata pœnitaque, quæ digna veniâ fuit." Lib. xi. c. 7.

the representation of a ghost. Another man went out with a gun, and shot him dead. He was tried for murder; and the Jury, from compassion, was inclined to find him guilty of manslaughter only: but the Judges told them, if they believed the witnesses, they must find him guilty of murder: if they did not believe the witnesses, and could think the deceased was not killed by the prisoner, they might find him not guilty: the charge could not be reduced to that of manslaughter. He was found guilty of murder. He afterwards received a pardon, because he acted with no bad intent, but, from an ignorance of the law, he thought he was doing a meritorious act.

What would have been the fate of this young man, if every judgment were carried into certain execution!

The man who represented the ghost was clearly in the commission of an illegal act, for which he might have been punished by fine and imprisonment; but still it was clear, that every one who intentionally put him to death, by a gun, *spring-gun*, instrument, or engine, was guilty of the crime of deliberate murder. Mr. Justice Foster and Mr. Justice Blackstone, and the best writers upon Criminal Law, concur, that

that no one can be justified in killing another, unless he is committing a crime by force, for which, if he had committed it, the law will take away his life.

But in all these cases, where the offender has acted with no malicious purpose and from an ignorance of the law,—for an ignorance of the law in such cases is highly criminal, where knowledge could easily have been acquired,—he can only be relieved by an application to that prerogative, which is the brightest jewel in the British Crown, and the most precious of the rights and liberties of the people :

“For Mercy is above the scepter’d sway :
It is enthroned in the hearts of Kings :
It is an attribute to God himself :
And earthly power doth then shew likest God’s,
When Mercy seasons Justice.”

But still justice must be seasoned with mercy by a sparing and a skilful hand. By an excess of mercy, the essence and quality of justice is destroyed. Excess of mercy becomes cruelty to the innocent, and also to the guilty; for an accommodation of guilt must inevitably produce, in its consequences, a far greater accumulation of punishment.

In

In the moral government of the world, independent of political establishments, the actions of men must be regulated by those rules, *which the wise and the good in all ages have declared* *; or by those which, in the words of Cicero, are best calculated to protect the great partnership of the human race,—*ad magnam tuendam societatem humani generis*.

But, in the moral state of man, these rules or laws can only be enforced by an union of the wise and good, who must carry on an eternal warfare with the wicked, or the violators of those laws.

In the political state of society, the immediate power of the wise and the good, to enforce obedience, is transferred to the Civil Magistrates; but their authority would soon be annihilated, if they were not supported by the powerful alliance of the wise and good.

If the energies of these are enervated or paralysed, the strength of the enemy must be augmented: the effeminacy and tender-heartedness of the one party will increase the ferocity and brutality of the other: and when we substitute commiseration

* This just and beautiful description of a moral rule, I take from the preamble to many of the Hindoo Laws.

tion for rigorous justice, the bonds of human association and civilized life are broken; and we destroy the existence of that which we are anxious to improve †.

Severity of punishments, especially as the laws are administered in this country, is not inconsistent with humanity and the mild dispositions of a people; as the following extract from Dr. *Robertson's History of India* will prove: Vol. I. p. 218.

“It is likewise worthy of notice, that though the natives of India have been distinguished, in every age, for the humanity and mildness of their disposition; yet such is the solicitude of their law-givers to preserve the order and tranquillity of society, that the punishments which they inflict on criminals are extremely rigorous.

“Punishment

† The female sex are everywhere appealed to, upon this momentous subject. It is easy to suppose in which scale of justice their vote will generally be placed. I know how to appreciate their judgment in the general *civil* transactions of life: it is often superior to that of their husbands and brothers; and I know no reason why they should not equal or excel them in Mathematics or Poetry, except that they never have done it: but such are the timidity and sensibility of the sex, their greatest ornaments, that I certainly should never employ them, or consult them, as generals, judges, or legislators, in any case where their judgment could be influenced by fear, pity, or love.

“Punishment (according to a striking personification in the Hindoo Code) is the magistrate; Punishment is the inspirer of terror; Punishment is the nourisher of the subjects; Punishment is the defender from calamity; Punishment is the guardian of those that sleep; Punishment, with a black aspect and a red eye, terrifies the guilty.”
Code of Menou, ch. xxi. § 8.

To ridicule the administration of justice in this country, it has been stated, that two men were jointly engaged in stealing fowls: one was apprehended and convicted, and was punished with a few weeks' imprisonment: the other, expecting only the same slight punishment, surrendered himself, was tried by another Judge, was convicted, and was transported. Surely there is nothing extraordinary in this. If you, Gentlemen Magistrates, had tried them at your Quarter Sessions, surely you might have had many reasons to transport one, and to punish the other only by a short imprisonment.

Another subject I think it right to mention to you, that, by persons ignorant of the principles of law and justice, Judges and Magistrates have been censured for increasing the punishment, for the insolence or bad behaviour of the prisoner in the Court. I knew one instance, where a prisoner, for stealing from the person, was sentenced by the
 Chairman

Chairman to be imprisoned for seven years. He took off his iron-heeled shoe, and was preparing to throw it at the Chairman, but was prevented. The Chairman and the Court then ordered him to be transported for life. This was perfectly correct. The Assizes and Sessions are considered as one day ; and every judgment, during the Assizes or Sessions, may be altered ; either increased or diminished.

The judgments ought to be proportioned to the character and former conduct of the prisoner : and the Court were clearly in an error in the first judgment, as the conduct of the prisoner proved that a severer judgment was necessary to protect the people of England from his future crimes, and as a salutary example to others.

I have never met with any instance of the kind myself ; but if such an insult to the Court should exist, I should defer the second judgment as long as the time of the Court would permit, that it might not appear to be done from anger, rather than from a sound discretion. But no Court ought ever, if possible, to pass it over unnoticed.

I shall now consider how the punishments, by our law, can be reconciled with the principles of the Christian Religion. That religion forms
part,

part, a great and important part, of the law of the land, or of the government of the country. A Chief Justice of the Common Pleas (Prisot) declared from the Bench, in the reign of Henry the Sixth, that the Scriptures are the Common Law upon which all other laws are founded*. Religion and morality must be the main pillars of every government. The design of all Legislators must be, to enforce the precepts of religion and the rules of sound morality. But it is now much laboured to prove, that the punishment of death is inconsistent with both.

All laws must endeavour to diminish, as far as human institutions will permit, the sum of human suffering. But the sufferings of the guilty ought not to be weighed in equal scales with the sufferings of the innocent. Legislators, as far as they have the power, ought to provide for the safety of the innocent, with the greatest possible economy of the pain and misery even of the guilty.

Lord Chief-Justice Hale, the most humane and religious man that ever filled a judicial situation in this country, has written his first chapter upon the Pleas of the Crown, upon Capital

* "La Scripture est common ley sur quel manières de lois sont fondés." *Year Book, Hen. VI. fol. 40.*

Capital Punishments; and after having considered particularly the laws of Moses, and of Greece and Rome, he thus concludes:—

“This I have mentioned, that it may appear that capital punishments are variously appointed for several offences, in all kingdoms and states: and there is a necessity it should be so; for regularly, the true, or at least, the principal, end of punishments, is, to deter men from the breach of laws, so that they may not offend, and so not suffer at all; and the inflicting of punishments, in most cases, is more for example, and to prevent evils, than to punish.

“When offences grow enormous, frequent, and dangerous to a kingdom or state, destructive or highly pernicious to civil societies, and to the great insecurity and danger of the kingdom and its inhabitants, severe punishments, even death itself, is necessary to be annexed to laws, in many cases, by the prudence of lawgivers; though, possibly, beyond the single demerit of the offence itself simply considered.” 1. *Hale*, P. C. 13.

One of the resolutions of that great man, to regulate his conduct as a Judge, was the following: “When I find myself swayed to mercy,

let me remember that there is a mercy likewise due to the country."

We are taught, by our religion, not to encourage "a spirit of revenge—" *Vengeance is mine; I will repay, saith the Lord.*" Punishment is a great evil; but it is inflicted to prevent a greater evil resulting from the unrestrained commission of crimes. If we open the first volume of the books dictated by infinite wisdom, we shall find the punishment of death was denounced in a great variety of cases, for which the Law of England has either provided no punishment whatever, or a punishment of a slight nature.

Of the great variety of crimes which the divine legislator, Moses, was directed to punish with death in his time, we shall find that at present the Law of England inflicts that punishment only upon three; viz. murder; a crime not to be named; and the violation of a female by force. For all the rest, we either have no punishment whatever, or the punishment is only for a misdemeanour.

The adviser to commit idolatry, even *if she is the wife of thy bosom, or thy friend which is as thy own soul*, was to be stoned to death.—Deut. xiii. 6.

To

To write against the truth of the Christian Religion is a great misdemeanour; and, probably, upon the same principle, to advise any one to renounce the Christian Religion would also be a misdemeanour. But it is yet a crime unknown.

“He that smiteth his father or his mother, and he that curseth his father or his mother, shall surely be put to death.”—*Exod. xxi. 15, 17.*

By the Law of England, the first offence is only an assault; and for the second, the offender may be fined 5*s.*, 2*s.*, or 1*s.*, according to his rank, for each curse or oath*.

“He

* This is by an excellent statute, the 19 *Geo. II. c. 21.*

Every Justice of the Peace ought to enforce this statute, upon every occasion. Profane and wicked words naturally lead to profane and wicked actions. Complaints are made to Magistrates, with respect to a thousand immoral and wicked actions, over which they have no jurisdiction whatever. In such cases, it will be prudence to conceal the infirmity of their authority: but they will frequently find that *this* statute has been violated by one or both parties. I should then recommend, that they should exert their full authority in the punishment of this offence; and to dismiss the parties, with an admonition or a reprimand, where the law has given them no power to act.

Every Gentleman, or person of equal or higher rank, may be fined 5*s.* for every oath or curse; every day-labourer, soldier or sailor, 1*s.*; every other person, 2*s.*—There is still an indiscreet suggestion retained in Burn's Justice, that a person may swear

“He that stealeth a man, and selleth him, or if he be found in his hand, he shall surely be put to death.”—*Exod.* xxi. 16.

To steal a man may be punished as an assault and false imprisonment; and to steal a child, by the late Act, 54 *Geo.* III. c. 101. may be punished as grand larceny, by transportation for seven years, or by fine, imprisonment, and whipping.

For adultery, incest, and the seduction of a virgin betrothed to a man, the offenders were to suffer death.—*Deut.* xxii.

By the Law of England, they are no crimes whatever in the Temporal Courts. They may be punished only in the Ecclesiastical Courts.

“If a man have a stubborn and rebellious son, which will not obey the voice of his father or the voice of his mother, all the men of his city shall
stone

incessantly from morning to night, and be subject only to one penalty.

I have noticed this error 4 *Bl. Com.* 60; and I will assert confidently, that every oath or curse is a distinct offence; and if a complaint is made before a Magistrate, on any day of the week (as Tuesday), he may convict the offender in as many penalties as the oaths or curses which he can be proved to have uttered on the preceding Tuesday, and on that day and on all the six intervening days.

stone him with stones, that he die."—*Deut. xxi. 18—21.*

This is a crime totally unknown to the Law of England.

"If the witness be a false witness, and hath testified falsely against his brother, then shall ye do unto him as he had thought to have done unto his brother : and those which remain shall hear and fear, and shall henceforth commit no more any such evil among you ; and thine eye shall not pity."—*Deut. xix. 18, 20.*

By this law of Moses, an attempt to take away the life of man, by giving false evidence against him, in the case of any of the preceding capital crimes, must have been punished with death. But by the Law of England, perjury is only a misdemeanour, though murder has been committed by it. The following reason I have assigned for it, long ago.

"The guilt of him who takes away the life of an innocent man by a false oath, is much more atrocious than that of an assassin, who murders by a dagger, or by poison.

"He who destroys by perjury, adds to the privation

tion of life public ignominy, the most excruciating of tortures to an honourable mind, and reduces an innocent family to ruin and infamy; but, notwithstanding this is the most horrid of all crimes, yet there is no modern authority to induce us to think that it is murder by the Law of England. Lord Coke says expressly, 'It is not holden for murder at this day.' 3 *Inst.* 48. See also *Fost.* 132. Such a distinction in perjury would be more dangerous to society, and more repugnant to principles of sound policy, than, in this instance, the apparent want of severity in the law. Few honest witnesses would venture to give evidence against a prisoner tried for his life, if, thereby, they made themselves liable to be prosecuted as murderers." *Christian's Note*, 4 *Black. Com.* 196.

Having made this comparison between the Law of England and that law which we are all compelled to believe proceeded from the Almighty himself, can we, consistently with truth or gratitude for the blessings we enjoy, pronounce the Law of England to be a sanguinary system of laws?

The Divine Founder of our Religion, I believe, has no where uttered a complaint against, or a disapprobation of, those laws, which have punished crimes with death; though he himself died, and foreknew that he should die, by the most cruel of all punishments:

ments: but he refers to the laws of his Country with apparent approbation. He has declared: "God commanded, saying, *Honour thy father and mother; and he that curseth father or mother, let him die the death.*" Matt. xv. 4.

He here refers the punishment of death for the cursing of parents, to the same Divine authority as the commandment to honour them. And the great convert to, and propagator of, his Master's doctrines, St. Paul, declared before Festus: "*If I be an offender, or have committed any thing worthy of death, I refuse not to die.*" Acts xxv. 11.

They were not the reformers of human governments: they were the reformers of the human heart, by instilling into it universal good-will and benevolence.

He whose actions are guided by their benign influence, may stand dauntless and harmless before the criminal tribunals of all the world.

The Saviour of Mankind, and his Disciples, taught the duty of every honest man and good subject, in a few words, viz.—"*Whatsoever things ye would that men should do unto you, do you likewise unto them;*"—"Fear God," and "*honour the king:*" and, by their precepts, their lives and examples, they taught

taught the duty of every man, whether he be in authority or out of authority, that duty which is fully comprised; and beautifully expressed, in the words of one of the Prophets—

“He hath shewed thee, O man, what is good: and what doth the Lord require of thee, but to do justly, and to love mercy, and to walk humbly with thy God?”
—Micah vi. 8.

CHAP. XII.

ADDITIONS TO THE CHARGE UPON THE
CRIMINAL LAW.

THE Charge, in the last Chapter, concludes with a statement of the Jewish Law ; and, in order that that should be accurate, I sat down to re-peruse, with attention, from the beginning to the end, those books of the Bible which are considered to contain the Law delivered to the Jews by Moses, in addition to the Ten Commandments: from which it will appear, that that law, which all must believe was the pure emanation from the Deity himself, was much more severe than the English Law.

It will perhaps amuse or instruct the Reader, to state to him, that, in another part of the Bible, we find an exact delineation of the English Constitution, in the Commission given by King Artaxerxes to Ezra, *who was a ready scribe in the Law of Moses, which the Lord God of Israel had given ; and the king granted him all his request, according to the hand of the Lord his God upon him.*

The Letter, or Commission, so granted at his request, then sets forth—

*And thou, Ezra, after the wisdom of thy God that is in thine hand, set Magistrates and Judges, which
may*

may judge all the people that are beyond the river, all such as know the laws of thy God; and teach ye them that know them not.

And whosoever will not do the law of thy God, and the law of the king, let judgment be executed speedily upon him, whether it be unto death, or to banishment, or to confiscation of goods, or to imprisonment.
—Ezra, vii. 25, 26.

When I delivered my sentiments in the preceding Charge upon the law with respect to stealing from dwelling-houses and shops, I did not remember that all I was saying had been much more strongly expressed by Lord Ellenborough and Lord Eldon, in the House of Lords, in the year 1811.

I had no doubt read their speeches at the time; and how far the impression they had made upon my mind had assisted my reasoning upon the subject, I cannot pretend to say; but their speeches are worth the serious attention of all, who wish for information upon the subject, as they contain far more clear and cogent arguments, confirmed by their long experience, than can be found in any book yet published.

LORD ELLENBOROUGH.

“One of the strongest objections indeed against these bills is, that they are brought forward upon

upon speculation merely, by persons no ways interested, and unsupported by any practical ground whatever. A bill of the same kind that passed two years ago, to alter the law which made stealing privately from the person a capital offence, has to my certain knowledge increased that offence to a serious and alarming degree. Several instances occurred at the last Sessions at the Old Bailey, where that offence had been committed with additional circumstances of atrocity; one, where a violent attempt was made at a rescue; and others where the offenders, detected in the attempt to pick pockets, but hardened by the impunity held out to them, did not scruple to turn again and assault the persons whose property they had failed of purloining. It has been pretended, indeed, that the increased number of prosecutions is not a proof of the increase of crimes, but of a greater willingness in the public to prosecute, now that the capital part of the offence is taken away. But noble Lords who argue in that manner cannot surely be in earnest in what they allege. Every practical man must know, that nothing can be more absurd than such a supposition, and that it is to the last degree preposterous to pretend that the increase of prosecutions is owing to any other cause than the greater frequency of the crime. As to prosecutors, I have never found that extreme backwardness in them
which

which has been complained of. So far from being encouraged, they require rather at all times to be restrained, for they are not wanting in an appetite for conviction. When once engaged in a prosecution, they seem to take a sort of pride in it, and to feel a degree of irritation at every obstacle thrown in the way of its success. Witnesses may, indeed, be often induced to falsify or soften their evidence from friendship to the accused party, but no such motive as common humanity ever actuates them. As to the jury, from my own experience I can say, that when I have plainly laid the law before them, and told them the nature of their duty, I have always found them act as became them. Nothing can be more unfounded or mischievous than to hold out to the public an idea that prosecutors, witnesses, and jurymen are deterred from doing their duty in these cases; yet this dangerous doctrine has found its way into a variety of publications. A pamphlet was left at my house, which I found on my table yesterday morning. I can look upon it in no other light than as an insidious attack upon the character and authority of the Judges, and on the administration of justice in general. In this pamphlet it is asserted, that juries pay no regard to their oaths; and a few cases are brought forward out of the records of the last fifty years. For myself, I have seldom met with any such cases. If such a case as
that

that of stealing the 10*l.* Bank note were to come before me, though I could not order the jury to alter their verdict, I should certainly think it my duty to send them back to reconsider it, as well as to remonstrate with them on the folly and wickedness of their conduct. It is a monstrous thing for juries to perjure themselves because they chuse to fancy the law unjust, and not in all cases to rely on the mercy and uprightness of the Judge.

“ It has been shamefully insinuated, that Judges are actuated in their opposition to the principle of these Bills by their love of power. I can assure your Lordships, that the discretionary power vested in the Judge is the most painful part of the duty he has to perform; and I should admire and applaud any person who could devise a mode by which the Judges could be freed from such a responsibility. Nothing but an honest conviction of the impolicy of these Bills could have induced me to oppose a measure apparently calculated to relieve me from the pressure of a burden more weighty and distressing than the inexperienced can imagine. But my sense of duty prevents me from being deterred by malice, or swayed by inclination.

“ In the foolish pamphlet to which I have alluded, the writer is so ignorant as to mistake
altogether

altogether the salutary and benevolent maxim of the law which calls the Judge the prisoner's counsel; and which only means, that in cases where the law denies the prisoner the advantage of counsel to plead his cause, the Judge is bound to supply the office of counsel wherever it might justly have availed the prisoner.

“ It has been scandalously and without a shadow of proof asserted, that a very celebrated pamphlet published in the year 1785, and ascribed to Mr. Madan, had produced an effect on the minds of the Judges, and that the number of executions for two years succeeding the publication was much greater than before, in consequence of that impression. Of the falsehood of such a charge, I entertained no doubt when I first saw it stated; but I have since put the question to all the Judges on my Bench, and have been still more fully satisfied by their answers, of the truth of my former opinion.

“ The passing sentence of death also, a ceremony than which nothing can be imagined more awful, nor, as I firmly believe, more effectual for the purpose of restraining crimes by terror, and as it were crushing them in embryo, has been treated with unpardonable levity, as a judicial mummary. I might call on all those who have ever witnessed that tremendous scene, and observed the trembling
criminals

criminals stand at the bar with all the formidable array of justice around them, and seen how strongly they are affected at the dreadful denunciation of a sentence which no man who is the object of it can say will not be executed upon himself, and I might then ask whether it had ever entered into their imaginations that such an awful apparatus was a mere mummery?

“The present system of criminal law has stood the test of a century. It has been hitherto the just boast of this country, that its laws were wise and humanely administered; and they ought not to give way to the extravagant speculations of modern philosophy, which spurns the practical lessons of experience, and would raise the superstructure of every measure on the unstable basis of abstract theory. When the Acts now proposed to be repealed were framed, there were in Parliament most wise and able legislators and statesmen. I might instance Lord Somers, Lord Cowper, Lord Hardwicke, and Mr. Lechmere, afterwards Lord Lechmere, besides many other eminent men, and their deliberations on these subjects bear all the marks of profound attention. Let not your Lordships be deceived then by specious observations and general reasonings; but be cautious how you sanction alterations, the consequences of which you cannot foresee. In the discussion of such a question,

question, experience and facts should be our only guides. We ought to rely on the practical wisdom of practical men ; and I will take this opportunity of stating, that I am strengthened in my own opinion on this subject by that of all those who are best acquainted with the proceedings of the courts of justice. Sir William Blackstone has been quoted as an authority in favour of the principle of the bill : but that writer, of whose genius and talents no one thinks more highly than I do, was young and inexperienced when he published his opinions ; and much as I respect him, I cannot help regarding his judgment as of less value than that of Dr. Paley on the same point.

“The whole of the argument may, indeed, be reduced to a very plain alternative : either there must be a high punishment for the aggravated commission of a certain crime, leaving the intermediate degrees between that and the lowest penalty to be determined by the discretion of the Judge ; or there must be a graduated scale of punishment proportioned to all the shades and circumstances of crimes. The latter mode is a theory apparently borrowed from the Chinese code, which assigns a particular punishment to every degree of crime, from murder down to the lowest denomination of the most trivial offence, and where even the blows of the *baton* with

with which the punishment is inflicted are not only numbered, but the size and thickness of the instrument are ascertained. Such a system is, however, not more absurd and ridiculous in theory, than it would be found nugatory in practice.

“ Ever since, by His Majesty’s favour, I was appointed to the high situation which I fill, and was called to assist in the deliberations of this House, I have made it a point of duty to attend here, and offer the humble advice which my professional experience has dictated to me on subjects connected with the making, altering, or repealing the laws of the land. In that capacity I have declared my opinion at present, and I trust that your Lordships will not hastily consent to exchange the solid benefits of wholesome practice for empty speculation: I shall therefore move, as an amendment, that the Bill be read this day six months.”

LORD ELDON.

“ I conceive myself called upon to express my sentiments on this occasion from the vast importance of the subject. It is one which in the course of my life has fallen under my most serious and anxious attention. There is, indeed, a disposition in most men’s minds to examine the principles on which our criminal law is framed. Early in life I paid considerable attention to the practice

of the criminal law, and I had afterwards the honour to sit as Judge in one of the courts of Common and Criminal Justice. In my official capacity I have to submit the cases of criminals to the discretion of my Sovereign; and I never approach the throne on these occasions, without having first reflected on the subject with all the attention which it is in my power to bestow. It is impossible for me to describe the anxiety which I often feel in the discharge of this painful duty. All these circumstances have naturally directed my mind to the laws relating to crimes and punishments; and from the result of my observations, I must say, that I entertain great doubts of the propriety of the present measure. The certainty of punishment, and the exact proportion between crimes and punishments, are phrases, perhaps, not sufficiently considered by those who most frequently adopt them, both in and out of doors. The criminal laws require the exercise of a discretionary power in their administration, and that must be vested in a great measure in the Judge.—It is an awful, but, I believe, a necessary responsibility. It is not practicable accurately to proportion the scale of punishment to the degree and circumstances of the offence by general enactments. Crimes that are nominally the same, admit of very different and marked degrees of moral turpitude. For example, in the case of
 burglary.

burglary. An instance lately occurred of this, where the criminal went armed with pistols, with crape over his face, a dark lantern, and manacles to bind those who should make any resistance. Another instance of the same offence was, where a boy of fourteen was detected in cutting, with a diamond or some such instrument, a pane of glass in a shop-window in Fleet-street, and then putting in his hand and taking out a gold seal and other articles. Each of these was a burglary, but the degree of guilt was very different. Though the law pronounces a capital punishment upon both, yet you would not on that account abrogate the sentence of death against burglary generally. A man, till that time of fair character, was lately convicted of stealing a horse worth 15s. It appeared that he was tempted to this, his first offence, by extreme poverty; while another person was convicted at the same assizes of the same offence, but of which it was known that he had made an habitual trade—a trade which had thrived so well with him, that he had false keys to every turnpike-gate within twenty miles of London. In sheep-stealing, there is also a wide difference between the man who steals a sheep to satisfy the cravings of hunger (a case of which sort I myself have tried), and the man who steals them for the purpose of selling them again, and who makes a trade of his iniquitous practices. These instances

are but a few, to shew that there must be often a vast disproportion in crimes of the same denomination. And I conceive that those specified by the present Bills may be occasionally attended with peculiar circumstances of aggravation, which might render it proper that an example should be made, though undoubtedly there have been but few instances of the sort. One observation I shall just mention, as it relates to the value of property stolen. It is of the last importance that the property of the industrious cottager should be protected, who is often obliged to leave his cottage, and his little hoard of perhaps not more than 40s. deposited in a tin-box in a corner of his room. One act of the nature of those before the House (I speak from the opinion of the Judges), namely, the Privately Stealing Bill, has been already productive of much mischief. There is an evident inconsistency, as it appears to me, in the reasonings of those who contend that the principle of terror has no effect on the minds of criminals; and who affirm, at the same time, that the supposed severity of the law prevents its being executed. It should seem from this statement, that the prosecutor is afraid, that the witness is afraid, that the jury are afraid, and that the Judge participates in the same terror, of affecting the life of a fellow-creature; and yet the criminal himself is supposed to have no fear at all. As long as human nature remains what it is,

I am

I am convinced that the apprehension of death must have the most powerful co-operation in deterring from the commission of crimes, and I think it unwise to withdraw the salutary influence of that terror. Of the necessity of vesting a very large share of discretion in the hands of the Judges, the framer of the present Bills appears to be himself aware; for though he takes away the penalty of death by the proposed alterations, yet he allows the Judges great latitude in measuring out the punishments which he wishes to see substituted in the room of death. Almost the universal opinion of those who are engaged in the administration of criminal justice is against the Bills; and this, added to the doubts existing in my own mind as to their practical utility, will induce me to give my vote against them.

“Considerable stress has, indeed, been laid on the authority of Judge Blackstone, as adverse to the present system. But I think his opinions on this subject, as contained in his Commentaries, are to be regarded as the offspring of an eager, rather than a well-informed mind. It should be remembered, that that work was written at a period when experience and observation had not matured his judgment. I have, however, reason to believe, that after he had learned to listen to those great teachers in political science, his opinions

nions underwent a considerable change, and that in the latter part of his life he saw the wisdom of the principles by which our criminal code is at present regulated."

The English Laws and Constitution have long possessed the love and veneration of every true-born Englishman, and have commanded the admiration and envy of the rest of the world; but these are strange times, when their best friends are obliged to call witnesses to their character.

I have long been treated with ridicule, for raising *my* feeble voice in their favour; as if it were no wonder that a Professor of the Laws of England should be partial to his subject, but it would be surprising if any disinterested man of sense should join in the commendation of them.

It therefore afforded me much satisfaction to find, that David Hume, Esq. Professor of the Laws of Scotland, in the year 1797, in his Commentaries, has done justice to the Criminal Law of England, by pronouncing the following testimony in its favour, and by giving it a decided preference to the Law of Scotland.

" - - - That the Law of England respecting Crimes is a liberal and enlightened system (having gradually

ally ripened, by the experience of ages, among a people who well understand the nature of a rational and moderate freedom); and that as such, as a body of written wisdom, it is entitled to deference, and may with propriety be quoted in those matters which our own customs or statutes have not settled. All this, what reasonable person will dispute? Farther; I will readily admit, that in many things our practice has not yet attained to the same maturity and consistency as that of our Sister Kingdom; that offences are not reduced throughout, in their description and several divisions, to the same orderly and systematic shape; and that we have still to settle many points of our form of process, which have long ceased to be the subject of controversy in the English Courts."

—*Introduction*, p. xliii.

"That our law is more rigorous than that of England, in regard to certain articles where, unhappily, there has of late been so much occasion to compare the two, this I feel as little inclination as power to dispute. Our ancient statutes animadverted with severity on those offences, which the factious and unruly temper of the inhabitants of this country made it indispensable to repress. And although it might have been expected, that in so long a period of increasing prosperity, and of mild and equitable government, as has elapsed since

since the latest of these laws, this vice of our disposition might in some measure have been corrected; yet have we, in the events of our own day, seen too much reason to commend in this particular the wisdom of our Legislature, and to be thankful for the powers which they have bestowed upon our Courts.”—*Ibid.* p. xlix.

The next author I shall call as a witness in favour of the English Constitution, is one, who, from the peculiar nature of his studies, was intimately acquainted with all the best existing Governments in the world, and who had the most correct and perfect knowledge of those rules of justice which secure the liberty and promote the happiness of mankind, and in whose writings the learned men of all nations have yet found the least, if any thing, to censure and to blame; I mean Vattel, the author of the “Law of Nations:” he has pronounced the following just and beautiful panegyric upon the English Government:—

“That illustrious nation (speaking of England) distinguishes itself in a glorious manner, by its application to every thing that can render the State the most flourishing. An admirable Constitution there places every citizen in a situation that enables him to contribute to this great end, and everywhere diffuses a spirit of true patriotism, which is zealously

lously employed for the public welfare. We there see mere citizens form considerable enterprizes, in order to promote the glory and welfare of the nation. And while a bad prince would be abridged of his power, a king endowed with wisdom and moderation finds the most powerful succours to give success to his great designs. The nobles and the representatives of the people form a band of confidence between the monarch and the nation, and concur with him in every thing that concerns the public welfare; ease him in part of the burden of government, confirm his power, and render him an obedience the more perfect, as it is voluntary. Every good citizen sees that the strength of the State is really the welfare of all, and not that of a single person. Happy Constitution! which they did not suddenly obtain: it has cost rivers of blood, but they have not purchased it too dear. May luxury, that pest so fatal to the manly and patriotic virtues, that minister of corruption so dangerous to liberty, never overthrow a monument that does so much honour to human nature; a monument capable of teaching kings how glorious it is to rule over a free people!—*Vattel's Law of Nations*, Book I. chap. 2.

It always gives me great sorrow, when I hear the Law of England depreciated by men of learning and talents. Their observations must have a great effect

effect upon the subjects in general, in alienating their affections from the Government, and in producing, amongst the lower ranks, disobedience to its authority.

Englishmen possess clear and strong understandings, but very little knowledge of their laws. I will therefore introduce, here, a part of an Introductory Lecture, which I delivered at Cambridge some years ago.

“It may be observed, I think with truth, that the people of England, who are blest with a Government founded upon the purest principles of liberty and justice, are greater strangers than the people of any other country to their own laws and institutions. In other nations of Europe, the Civil or Roman Law prevails in a much greater degree than in England; and that has long, in Foreign Universities, constituted a considerable part of the Scholar's education. The Jews, Mahometans, and Hindoos necessarily become acquainted with their laws from their earliest infancy; they imbibe them with the first principles of their religion; their laws and their religion are found inseparably woven together, in the Pentateuch, Korân, and Vedas.

“The simplicity and superior excellence of the doctrines of Christ furnish us with a very short code

code of law and justice. The principle of universal charity, if properly cherished, would eradicate from the human heart every passion which could instigate a violation of justice ; and the complicated system of rigorous and vindictory law, by the genial influence of kindness and benevolence, would become a dead letter. It is a remarkable, but just sentiment, of the celebrated historian, Mr. Gibbon, that ‘Benevolence is the foundation of justice ; since we are forbid to injure those, whom we are bound to assist.’ Vol. V. p. 215. But this is far better expressed by the great Apostle : ‘Love (that is, benevolence) worketh no ill to his neighbour : therefore love is the fulfilling of the law.’ *Rom. xiii. 10.*”

From CHRISTIAN'S Syllabus.

The very extraordinary circumstances of the present times, which have brought to light the most deliberate and desperate design of effecting a revolution in this country, by the overthrow of all religion and moral justice, induce me to add here two chapters, containing the substance of Lectures which I have occasionally read to learned audiences in the University of Cambridge.

CHAP. XIII.

THE PRINCIPLES OF MORAL JUSTICE
EXPLAINED.

MR. PALEY'S principle or foundation of moral obligation (viz. the *expediency* which is agreeable to the will of God) has been frequently attacked by several authors of great abilities, and by some much distinguished for their piety; and many who have not published their sentiments to the world have considered it as a dangerous principle, and even have withheld the perusal of Mr. Paley's Moral Philosophy from their family*.

It has always appeared to me, that the danger exists only in a misconception or misrepresentation of the sense in which *utility* or *expediency* ought to be understood.

The

* Dr. Paley is not a profound writer upon moral justice; and perhaps a few errors might be pointed out in his excellent book: but he writes with great good sense, and with great goodness of heart, in a perspicuous lively style, particularly captivating to youthful readers, who peruse his work with much pleasure and delight, and leave it with an ardent inclination and wish to acquire further information upon the important subject.

The word may be dangerous; but the principle, when properly ascertained or rightly understood, is sound and safe.

Those who have thought *expediency* or *utility* a dangerous foundation of morals or natural law, contend that it will justify assassination, seduction, robbery, rapine, and every enormity, as often as men think it their interest to commit those crimes. But this is surely a very erroneous construction of the words *utility* and *expediency*, as used by the best writers upon General Law: no one ought to think an action right and moral, because it is expedient or useful to himself, because it promotes his interest, or contributes to his pleasures; but we must consider whether it would be expedient for mankind at large that every one should be permitted to do such actions, or whether wise and good men would agree in the expediency of such actions, and would recommend the practice to their children, and to all whose happiness they valued as their own. The true signification is this, viz. What is useful and expedient to the world at large, considered as one family, or one partnership. Cicero, in his Offices, inculcates, almost in every page, that just notion of *general utility*; and whoever has read that elegant and valuable treatise of moral duties with attention, will be convinced, that by men of
sense

sense and learning, *utility*, or *expediency*, can never be interpreted 'private interest,' or 'the advantage of the individual.' To prevent his Son from falling into that error, in one place he uses these remarkable words:—

“Ergo unum debet esse omnibus propositum, ut eadem sit utilitas uniuscujusque et universorum; quam si ad se quisque rapiat dissolvetur omnis humana consortio.”—CIC. *de Off.* lib. iii. c. 6.

Which may be construed thus:

“All men, therefore, ought to have one object, that the *utility* or *expediency* of each individual and of all mankind should be the same: if every one grasped at his own advantage, all human intercourse would be dissolved.”

And in another place, he immediately addresses his Son:—

“Tu, cùm eâ lege natus sis, et ea habeas principia naturæ, quibus parere, et quæ sequi debeas, ut utilitas tua communis utilitas sit, vicissimque communis utilitas tua sit.”—CIC. *de Off.* lib. iii. c. 12.

“Since you have been born subject to this law, and these are the principles of your nature, or moral justice, that your utility should be the
common

common utility; and, on the other hand, that the common utility should be your utility.

Expediency, or utility, in the best sense, is therefore the same as ‘the public good,’ or ‘the universal good;’ which is, or ought to be, the object of all laws.

These rules and laws must be such as is well expressed frequently in the Hindû Laws; viz. that they are what the wise and good in all ages have declared.

It does not signify, considered philosophically, what are the opinions of the wicked and the foolish; or their opinions ought for ever to be kept unmixed with the *δόγματα ἀνθρώπων φρονίμων*, or “the resolves of wise men*.”

This

* This is part of the description of law given by Demosthenes: it is a general description of both moral and positive law; and is perhaps the most perfect and satisfactory that can either be found or conceived: Οἱ δὲ νόμοι τὸ δίκαιον καὶ τὸ καλὸν, καὶ τὸ συμφέρον βούλονται, καὶ τῷτο ζητοῦσι. καὶ ἐπειδὴν εὐρίθῃ, κοινὸν τῷτο πρόσταγμα ἀπιδείχθῃ, πᾶσιν ἴσον καὶ ὅμοιον. καὶ τοῦτ' ἔστι νόμος, ὃ πάντας προσήκει πείθεσθαι διὰ πολλὰ, καὶ μάλιστα, ὅτι πᾶς ἐστὶ νόμος εὐρημα μὲν καὶ δῶρον θεῶν, δόγμα δ' ἀνθρώπων φρονίμων, ἐπανόρθωμα δὲ τῶν ἐκείνων καὶ ἀκείνων ἀμαρτημάτων, πόλις δὲ συνθήκη κοινή· καθ' ἣν πᾶσι προσήκει ζῆν τοῖς ἐν τῇ πόλει. “The design and object of laws is, to ascertain what is just, honourable, and expedient; and when that is discovered, it is proclaimed as a general ordinance, equal and impartial to all. This is the origin
of

This *expediency* is the principle, the object, or the bond of the system of moral rules or of universal justice; and these rules or laws are the guide of the conduct of each individual.

It is the general or universal rule, which must be founded upon *expediency*; and each action must be made conformable to the rule.

If every one were to judge of the utility of the individual action to himself, the actions of men could not be said to be governed or influenced by any laws, or set of rules; but every one would be left to act according to his own whim, caprice, or fancy, or according to what he thought good in his own sight.

Private utility, or *expediency*, has been well described by Tacitus: — "*Privatæ res semper offecere officientque publicis consiliis. Pessimum veri affectûs et judicii venenum sua cuique utilitas.*"—TAC.

Private interest has always been, and ever will be, an obstruction to public councils. The very worst of law, which, for various reasons, all are under an obligation to obey, but especially because all law is the invention and gift of Heaven, the resolves of wise men, the correction of every offence voluntary and involuntary, and the general compact of the State; to live in conformity with which, is the duty of every individual in society."—*Orat. I. cont. Aristogit.*

worst poison of a sound disposition and judgment is, 'every one's own advantage.'

I have heard this principle of moral justice called, in a public discourse before the University of Cambridge, the *pestilential* system of *utility* : if it means the *sua cuique utilitas*, or 'private advantage,' it would be both *pestilential*, and the reverse of truth and wisdom ; but the *utilitas universorum*, the 'benefit of all mankind' considered as one family or partnership, no philosopher, or man of sense, I think, can object to, or quarrel with.

"Ita semper officio fungetur, *utilitati* consulens *hominum* ; et ei, quam sæpe commemoro, *humanæ societati*."

That is, "He will always discharge his duty, who has a regard for the 'interests of mankind ;' and for that which I frequently mention, the 'partnership of mankind.'"

The moral rules of those who believe in a future state of rewards and punishments ought to be such as will best promote their temporal and spiritual interests and happiness. The utility of such rules must have a reference to the state of all men, both in this world and in the next.

It is the utility of the rule which is the principle of moral obligation; not the utility of the action to each individual.

This species of utility will almost always be in direct opposition to the other.

In the opinion of the individual, the *sua cuique utilitas* will generally conflict with the *utilitas universorum*.

No one ought to be a judge in his own cause; so no one ought to be a judge of his own moral conduct; but it ought to be such as the wise and good in all ages, and in all countries, approve.

There is a wide difference, whether a man is governed by his own reason, or is governed by the rules of the right reason of wise and good men.

Sua cuique utilitas, or 'private utility,' would induce men to run from every contract and engagement, and would lead them to gratify their most selfish passions at the expence of others; but if every member of the community had the same permission, each would be greatly a loser in such a partnership; and the whole would soon be ruined, and reduced to a state of bankruptcy and misery.

But Mr. Paley thought that he had guarded this word *expediency* from misconstruction, when he had
added

added to it, that it was that expediency which must be agreeable to the will of God.

But even so cautiously qualified, it is still found to be liable to objection, in the opinions of some learned and good men.

In a subject of such infinite importance, which equally concerns men of every description and degree, the learned and the unlearned, the wise and ignorant, it would be desirable, if it were possible, to refer to some principle or rule in which they would all concur.

That ‘honesty is the best policy,’ and ‘dishonesty the worst,’ is a maxim which cannot be too much inculcated upon unlearned minds; but still science will frequently require, by what criterion honesty itself is to be discovered and ascertained.

One of our best Writers of moral essays has made a wise heathen reason thus;—

“If there’s a Power above us,—
And that there is, all Nature cries aloud
Through all her works,—he must delight in virtue;
And that which He delights in, must be happy*.”

* It is much to be regretted, that this universally just sentiment was immediately followed by the most shocking crime, both against moral justice and the law of God; viz. Self-murder.

Thus some Philosophers have been made to reason, who were never enlightened by the Christian Revelation.

Happiness would probably be a more desirable word than *expediency*, being less likely to be interpreted in a bad sense ; as this is generally applied to the consequences which result from just and virtuous conduct, both to the individual and to the community.

SEARCH, in his chapter upon "General Good," has well said : "Therefore the Universe may be justly regarded as an innumerable host of Partners, dealing together in the traffic of happiness." Vol. V. c. 28. p. 356.

There is no magic in a word, though frequently much influence in it : we may therefore substitute for *utility*, or *expediency*; *happiness*, *prosperity*, *welfare*, *benefit*, *advantage*, *interest*, or *good*.

All laws, both moral and positive, must be made to promote the happiness, prosperity, welfare, interest, and good of mankind,—*sua si bona norint*, If they do but know in what their real happiness and good consist.

But

But if we Christians qualify these words, by adding, that they must promote that happiness, interest, or good, which is consistent with the precepts of the Christian Religion, all ground for objection, it is hoped, would then be removed.

In the Year Book 34 *Hen. VI.* fo. 4. it is said that Chief-Justice Prisot declared from the Bench, in the Court of Common Pleas, that “Ancien Scripture est Common Ley, sur quel tous manières de leis sont fondes.”—“The Ancient Scripture is the Common Law, upon which all manner of laws are founded*.”

If we have recourse to that sacred volume, we shall find the whole duty of man to man, or the great charter of all laws and government, drawn up in a few words: “Whatsoever things ye would that men should do unto you, do ye likewise unto them; for this is the Law and the Prophets.”

The superiority of the doctrines inculcated by the Author of our Religion, over those of all other Legislators and Moralists, may be considered the highest and best evidence of their Divinity. The Gospel

* The words were spoken in English; but it was the practice of the times to preserve the meaning in old Norman French.

Gospel itself is an everlasting miracle; for, “*surely no man ever spake like that man:*” or with the Centurion we may say, “*Surely this man was the Son of God!*”

By a reference to that sacred volume, we shall have no room to doubt what species of *expediency* should be the basis of the rules of justice. It is that which is most likely to promote our happiness both here and hereafter, or it is that which must be agreeable both to the will and to the word of God.

If we consult the Sages of Greece and Rome, we shall find that they had a correct knowledge of the foundation of laws and of moral obligation.

CICERO, as I have already stated, is everywhere anxious to distinguish between universal good and private advantage: and he has, in many places, inculcated the doctrine, that all moral law and justice must be agreeable to the will of God, or must be derived from the illuminations of the Deity:—

“*Est recta ratio a numine Deorum tracta imperans honesta et prohibens contraria; et lex vera atque princeps, apta ad jubendum et vitandum ratio est recta summi Jovis.*”

“Right

“Right reason, which commands what is honest and honourable, and prohibits the contrary, is derived from the inspiration of the Gods: and the sovereign true law, designed to command and forbid, is the right reason of the Supreme Deity.”

Or he means to say, that all moral justice is a transcript of the wisdom and the will of God, written in the tablets of our hearts.

In the following passage, he is anxious to distinguish between *universal* and *particular expediency*.

“Si justitia est obtemperatio scriptis legibus institutisque populorum, et si, ut iidem dicunt, *utilitate* omnia metienda sunt, negliget leges easque perrumpet si poterit is, qui sibi eam rem fructuosam putabit fore. Ita fit, ut nulla sit omnino justitia, si neque natura est; et ea quæ propter utilitatem constituetur, utilitate illa convellitur.” Cic. lib. i. *de Legibus*.

“If justice is obedience to the written laws and the ancient institutions of a people, and if, as some say, every thing is to be measured by its *utility*, then every one who has the power will disregard the laws, and be guilty of a violation of them, when he thinks that that violation will be productive of advantage to himself.

Whence

Whence it follows, that there can be no such thing as justice, if this is not founded in nature and reason; and that which is established for the sake of utility, is torn down by that utility itself."

It is difficult to translate the last sentence, and preserve the antithesis of the Latin. But the meaning of the whole is clear; viz. If every thing is to be measured by its beneficial consequences, and justice is obedience to the laws, then every one will be guilty of a breach of the laws, as often as he shall deem it beneficial to himself. But if this were not true, there would be an end of justice; and that which is established for the general or universal good, would be destroyed by the private interest of the individual.

The apophthegm, *Salus populi suprema lex esto*, "Let the safety or the welfare of the people be the supreme or sovereign law," has everywhere been repeated with approbation*.

This

* This in general has been cited, without being correctly understood. Cicero applies it to those who are to have absolute authority; and who, not being bound by any other law, ought still to be governed by this law, viz. the safety or security of the people. "Regio imperio duo sunt, iique præeundo, iudicando, consulendo, prætores, iudices, consules appellantur; militiæ summum jus habento, nemini parento, ollis salus populi suprema lex esto." *Cic. lib. de Legibus.*

This certainly ought to be the principle and object of all laws: But still, this must not be confined to the private interests of a particular people: it must be such as will promote the happiness or welfare of all mankind: it must be such as is calculated *ad tuendam magnam societatem humani generis*, "To protect the great partnership of the human race."

The Slave Trade may enrich a town, an island, or a kingdom; so will, for a time, successful robbery or piracy: but those, who are guilty of such crimes, must be treated as the public enemies of mankind.

Plutarch, in his Life of Agesilaus, says, that the Lacedæmonians thought nothing just but that which increased the power of Sparta.

That was a false notion of justice. The laws of nations repudiate such a false mercenary principle, which would be destructive of all honour and good faith betwixt nation and nation.

Cicero probably copied what he found most valuable in Aristotle; and that profound Grecian philosopher makes justice, or the rules of justice, to consist in the *common benefit*, or *expediency*.

The

The following passages,—one in his Treatise upon Morals, and the other in his Treatise upon Government,—are very striking instances of the conceptions of his capacious mind.

Και ἡ πολιτικὴ δὲ κοινωνία, τὸ συμφέροντος χάριν δοκεῖ καὶ ἐξ ἀρχῆς συνελθεῖν καὶ διαμενεῖν· τῆτος γὰρ καὶ οἱ νομοθεταὶ σοχαζονται, καὶ δίκαιον φασὶ τὸ κοινὴ συμφέρον. Οὐ γὰρ τὸ παρόντος συμφέροντος ἡ πολιτικὴ ἐφίεται, ἀλλ' εἰς ἅπαντα τὸν βίον. ARIST. *Eth.* lib. viii. c. 9.

That is, “Political partnership (community or society) seems to have been brought together originally, and to have been continued for the sake of expediency: for Legislators aim at this, and say, that the *common advantage* (or *expediency*) constitutes *justice*. For the State (or Government) does not desire an advantage for the present time, but that which has a reference to the whole life of a man.”

Ἐπεὶ δ' ἐν πασαις μὲν ταις ἐπισημαῖς καὶ τεχναῖς ἀγαθὸν τὸ τέλος, μεγίστον δὲ καὶ μαλιστα ἐν τῇ κυριωτάτῃ πασῶν, αὕτη δ' ἐστὶν ἡ πολιτικὴ δύναμις. ἐστὶ δὲ πολιτικὸν ἀγαθὸν τὸ δίκαιον· τῆτος δ' ἐστὶ τὸ κοινὴ συμφέρον. ARIST. *Pol.* lib. iii. c. 12.

“Since in all arts and sciences good is the end,

so the greatest good is particularly the object in that which is the chief of them all, viz. the government of a State: but the good of the State consists in justice, and that is the result of *common expediency, or the general benefit.*"

In the former quotation, Aristotle states it as the opinion of Legislators, that the public good constitutes justice: in the latter instance, he declares it expressly as his own.

Horace, with all the levities, perhaps I may say vices, of a modern man of fashion, has in no instance more recorded his good sense and sound understanding, than in the following lines descriptive of the moral sentiments of Homer:—

“ Quid, quid sit pulchrum, quid turpe, quid utile, quid non,
Pleniùs et meliùs Chrysippo et Crantore dicit.”

The moral sentiments of Homer are collected by Duport, and most of them are shewn to be consistent with the Scriptures.

Aristotle everywhere cites Homer with approbation, and frequently cites him incorrectly; which is a strong proof that he quoted from memory, and did not immediately copy his quotations from a volume within his reach.

And

And Xenophon informs us, that his father, in order to make him a good man, obliged him to get all the verses of Homer by heart.

So it appears, that in the course of near three thousand years mankind have made little advance in the study of the science of morals. And I think it will be found to be true, that the further we deviate from the principles of the Ancients, the further we shall wander into error, confusion, and absurdity.

In treating moral subjects as a science, quotations from ancient authors must have the same effect as the decisions and declarations of the most learned Chancellors and Judges upon questions of law. These are, in the words of Demosthenes, the *δόγματα ἀνθρώπων φρονίμων*, or “the opinions of wise men.” These opinions are what the wise and the good, in all past ages, have thought and declared; and what the wise and the good, in all future ages, will reverence and endeavour to reduce into practice.

CHAP. XIV.

THE SUPERIOR EXCELLENCE OF THE MORAL
PRECEPTS OF THE CHRISTIAN RELIGION.

IT may perhaps be thought that I am assuming the province of a divine; but the principles of moral law and universal justice being necessarily the foundation of all the law and justice administered and enforced under every form of government, the consideration of the moral precepts enjoined by our Religion will, I am persuaded, illustrate and confirm the principles which have been already advanced in the preceding Lectures: and the investigation of this important subject cannot fail to be of some advantage, even to the Student of Law; more especially as it has been well observed by Dr. Johnson, in the Preface to the Preceptor:—"When the obligations of Morality are taught, let the sanctions of Christianity never be forgotten; by which it will be shewn, that they give strength and lustre to each other: Religion will appear to be the voice of Reason; and Morality, the will of God."

The laws of the land ought also to appear to be
the

the voice of Reason ; and the just administration of them to be agreeable to the will of God.

Religion and sound morals are the pillars of the English Government ; or they may be called the two anchors, by which the vessel of the State is kept steady, from the fury of the tempests, or the violent passions of its subjects.

The Christian Religion and Morality are so far constituent parts of the English Government, that, by the Common Law, or from time immemorial, any publication in derogation of either is an immediate libel against the Government*.

The author of the " Doctor and Student" has truly and beautifully said, that " in the law positive, well made, there is much both of the law of reason

* Carlile, in Michaelmas Term 1819, received the judgment of the Court of King's Bench, for the publication of two impious books denying the truth of the Christian Religion. For the first he was fined one thousand pounds, and sentenced to two years' imprisonment ; and, for the second, five hundred pounds, and one year's imprisonment, in Dorchester Gaol ; and to find sureties for his good behaviour for life.

It appeared that this man had sold 3000 copies of one of his blasphemous books, at half-a-guinea each, since the beginning of the year. A more horrid attempt to produce a Revolution, by the destruction of the influence of religion upon the minds of the lower classes, never appeared in the history of England.

reason and of the law of God; and to discern the law positive from the law of God, is very hard."

Baron Montesquieu has also well said, in his *Spirit of Laws*; "The Christian Religion, which appears to have no other object than the happiness of a future life, yet produces our welfare in this *."

It has also been justly observed, that Religion, which includes in it not only justice, but all the virtues, is the best prop, and only true support, of every Government; as without it men can never feel how necessary it is to obey.

Every believer in the truth of that religion must be convinced, that if there were a future time only in this world, we should be happier by the observance of its precepts.

It is *that* true philosophy, which has been well described by Cicero, though he had not the blessing to live to be acquainted with it:—

"O Philosophia! unus dies ex præceptis tuis actus peccanti immortalitati anteponendus est."

"O Phi-

* "Chose admirable! la Religion Chrétienne, qui ne semble avoir d'autre objet que la félicité de l'autre vie, fait encore notre bonheur dans celle-ci."—*Montesq.* liv. xxiv. c. 3.

“O Philosophy! one day spent conformably to thy precepts is preferable to an eternity of sin and wickedness.”

The great excellence of the influence of Religion is to deter men from the secret violation of moral duties and obligations : when acts of wickedness and injustice become manifest, or can be proved by human testimony, it is the part of the Legislature and Civil Magistrate to correct and punish.

When the Author of our Religion appeared in the world, the Romans, after long attention to the study and improvement of their laws, had become almost perfect masters of the science of that complicated system of moral and political justice which regulates all the commerce and intercourse of civilized life ; and human governments had provided or secured retribution or punishment for the breaches of all the rigorous rules of justice, or the violations of the perfect duties and obligations.

Those rules of honesty and universal justice, which were obvious to the reason and general understandings of mankind, our Saviour had no occasion to particularize ; for in the words of Hooker, “ The laws of well-doing are the dictates of right reason :” p. 15.

In

In the New Testament we find only a general recommendation of the rules of justice; and the subjects of every country are left to discover, by their own reason, what is just and unjust.

The Divine Author of our religion even disclaimed all interference with the well-known rules of justice, or the laws of his country: for one of the company said unto him, "Master, speak to my brother, that he divide the inheritance with me: and he said unto him, Man, who made me a judge or a divider over you?" *Luke xii. 13.*

But as a rule of justice or a perfect obligation can never be violated, but from the instigation of some bad passion, our Saviour has taught a doctrine by which every wicked and malignant inclination may be eradicated from the hearts of men, and the benevolent affections may be planted in their stead; which are productive of so much positive happiness in this life, and prepare us for the enjoyment of still greater in the next.

The principles of justice in the Roman Law were, *Alterum non lædere, suum cuique tribuere*, 'To hurt no one, and to give every man his own;' which might have been expressed by the negative, 'Do not to others what you would wish that others should not do to you:' and agreeably to that, we find that

Quod tibi vis non fieri, alteri ne feceris,—‘Do not to another what you would not wish should be done to yourself,’—is a maxim in the English Law.—Judge DODDRIDGE’S *English Law*.

But our Saviour’s universal precept is in the affirmative, “Whatsoever things you would that men should do unto you, do ye likewise unto them;” which, he declares, comprehends all the Law and the Prophets.

This comprises all the duties of justice; and it comprehends also all the duties of kindness, good-will, or benevolence. It commands us to cherish that spirit of good-will, and to *do* those acts of kindness to others, which it would be pleasing to us to experience from them; and whilst we are guided by the benign influence of benevolent affections, we can never be instigated to the violation of any rule of justice.

It is a remarkable but just observation of the elegant historian, Mr. Gibbon—“Benevolence is the foundation of justice, since we are forbid to injure those whom we are bound to assist.” Vol. V. p. 215.

It is unquestionably true, what this sentence implies; viz. that the law, which commands us to *assist*, includes in it also a command not to *injure*.

How

How much better is this expressed in the Scriptures:—"Love * (that is, benevolence, or kindness) worketh no ill to his neighbour: therefore love is the fulfilling of the law."—*Rom. xiii. 10.*

After I had begun to collect these observations upon the superior excellence of the doctrines of the New Testament, I was much struck with Aristotle's sentiments (which I had not before perused) upon *φιλία*, or *friendship*; an affection of the mind not materially different from love, charity, or benevolence. He says, that States seem to be governed by *friendship*; and that Legislators are more anxious to establish friendship than justice; for this would preserve unanimity, and banish all faction and hostility: *For if men are kind or friendly to each other, they would have no occasion for justice; but if they were just, they would still require, in addition, the aid of friendship: so that friendship or benevolence constitutes the greatest portion of justice.*

Εοικε

* I need not inform the Student who can read the New Testament in its original language, that Love, Charity, and Good-will, throughout the New Testament, are all expressed by the same word (*αγαπή*), and mean exactly the same as the more modern words, Kindness, Affection, and Benevolence.

St. Paul concludes his eloquent chapter upon Charity with these words: "And now abideth faith, hope, and charity, these three; *but the greatest of these is charity*; or benevolence:" *Μεζων δὲ ἡ τούτων ἀγαπή.*—*1 Cor. xiii. 13.*

Εοικε δε και τας πολεις συνεχειν ἡ φιλια· και οἱ νομεθεται μαλλον περι αυτην σπενδαζειν, ἢ την δικαιοσυνην· ἡ γαρ ὁμονοια ὁμοιον τι τη φιλια εοικεν ειναι· ταυτης δε μαλιστα εφιεονται, και την στασιν εχθραν ουσαν μαλιστα εξελαυνουσι. Και φιλων μεν οντων, ουδεν· δει δικαιοσύνης· δικαιοι δε οντες, προσδεονται φιλιας. Και των δικαιων το μαλιστα φιλικον ειναι, δοκει.—ARIST. *Eth.* lib. viii. c. 1.

Our Saviour tells us, that it had been recommended, as a merit and a virtue, to hate our enemies: “Ye have heard that it hath been said, Thou shalt love thy neighbour, and hate thine enemy: But I say unto you, Love your enemies, bless them that curse you, do good to them that hate you, and pray for them which despitefully use you and persecute you.” *Matt.* v. 43, 44.

It is impossible to love our enemies as we love our friends: but the meaning of the Author of our Religion was probably this, viz. that instead of indulging our hatred against our enemies, that we should discourage, as much as possible, a passion of resentment and revenge, which, unchecked and unrestrained, would be apt to break out into acts of violence, and a violation of the rules of justice.

By checking this passion, and by cherishing and encouraging a friendly and benevolent affection, we may, in time, actually love those who have

have been our enemies. It is not uncommon for two enemies, by repeated acts of kindness and good offices, to become warm friends.

Forgiveness of injuries constitutes so considerable a portion of the morality and practice of a Christian, that it is the condition upon which he implores and petitions Heaven for his own pardon: "*Forgive us our trespasses, as we forgive them that trespass against us.*"

The forgiveness of injuries has been described with much sublimity, by a celebrated Moralist:

"Of him that hopes to be forgiven, it is indispensably requisite that he forgive. It is therefore superfluous to urge any other motive. On this great duty, eternity is suspended; and to him that refuses to practise it, the throne of mercy is inaccessible, and the Saviour of the world has been born in vain."—*Rambler*, No. 185.

When Christ told the Lawyer, who wished to baffle him in dispute, that it was his duty to love his neighbour as himself; he, wishing to justify himself by the vagueness of the expression, as if it were difficult to ascertain who he was, asked, "Who is my neighbour?" which question the Saviour of the world answers by the parable of the

the Good Samaritan; the finest instance of the pathetic that ever was exhibited to the world.

“ A certain man went down from Jerusalem to Jericho, and fell among thieves, which stripped him of his raiment, and wounded him, and departed, leaving him half dead. And by chance there came down a certain Priest that way: and when he saw him, he passed by on the other side. And likewise a Levite, when he was at the place, came and looked on him, and passed by on the other side. But a certain Samaritan, as he journeyed, came where he was: and when he saw him, he had compassion on him, and went to him, and bound up his wounds, pouring in oil and wine, and set him on his own beast, and brought him to an inn, and took care of him. And on the morrow when he departed, he took out two pence, and gave them to the Host, and said unto him, Take care of him: and whatsoever thou spendest more, when I come again I will repay thee. Which now of these three, thinkest thou, was neighbour unto him that fell among the thieves? And he said, He that shewed mercy on him. Then said Jesus unto him, Go, and do thou likewise.” *Luke x. 30—37.*

By this beautiful parable our Saviour manifestly declares, that all our duty to our neighbour consists in the cultivation and practice of the charitable,

table, benevolent, and humane affections; or, as one of his followers, a true Christian, has been described—"He will do hurt to no man, but will do good to every man."

The real virtue and merit of a Christian consists in the extent of this kind disposition, which cannot be measured by the quantity of good which we have the actual power of doing;—as the poor Widow, who threw her two mites into the treasury, is represented to have possessed as much public spirit, or love for her country, as those, who, from abundant stores, might have contributed as many thousands.

The superior excellence of the moral doctrines of the Scriptures consists in the perpetual recommendation of meekness, humility, mercy, kindness, and good-will; and whilst these have influence over the minds and hearts of men, it becomes impossible that they should ever be instigated by any bad passion to the commission of crimes, or the breach of the rules of justice.

The rigorous rules of justice, with the terrific machinery of punishments, are prepared by austere moralists and legislators, to restrain the violence of those whose hearts cannot be softened by the benign influence of Christian benevolence:

Before

Before I conclude these observations upon the moral principles and precepts of the Scriptures, I shall suggest that we have the authority of Christ himself, that the duties of benevolence, or the imperfect obligations, create in others a very different right from a perfect right, or a right of justice.

It is the case which our Saviour gives of the Householder, who hired labourers to work in his vineyard. Early in the morning he agreed (by an express contract) with some, that they should work for a penny a-day. At the eleventh hour he saw men standing idle, whom he ordered to go and work in the vineyard, but made no specific bargain with them; but promised only, that he would give them "whatsoever is right." When they all came to be paid, he gave those who had worked only a single hour, in the cool of the evening, every one a penny; which induced those who had worked twelve hours, and had borne the burden and heat of the day, to *suppose* that they had a right to a greater share of his bounty and generosity; and when he gave each of them only a penny, they *murmured against the good man of the house*. But he answered one of them—"Friend, I do thee no wrong: Didst not thou agree with me for a penny? Take that which is thine, and go thy way: I will give unto this last even

even as unto thee. Is it not lawful for me to do what I will with my own?"

No instance can possibly be imagined which so happily exemplifies the distinction between the rights of justice, and those of benevolence and generosity.

The original is correctly and elegantly translated: but to mark the distinction more forcibly, the words *οὐκ ἀδίκω σε* might be rendered, "*I do thee no injustice;*" and *θελω δόναι*, "*It is my will and pleasure to make a gift unto thee*" the last, of as much as I was bound to pay unto thee."

Having made these observations upon the superior excellence of the Moral Principles of the Scriptures, considered philosophically as the foundation of the rules of human conduct, I will cite here what that learned man and great ornament of human nature, Sir WILLIAM JONES, has said upon this subject:—

"I have carefully and regularly perused these Holy Scriptures; and am of opinion, that the volume, independently of its Divine origin, contains more sublimity, purer morality, more important history, and finer strains of eloquence, than

than can be collected from all other books, in whatever language they may have been written."

Every Scholar will be instructed and gratified by perusing the Korân of Mahomet: he will find there many wise rules of conduct, probably taken from the Bible, which the Mahometans believe. Charity to the poor, and reverence to parents, are everywhere inculcated; but in the effusions of the pretended Prophet, he will look in vain for that universal benevolence, which constitutes the divine excellence of the Scriptures.

The following is one of the most remarkable passages I have found in the Korân:—"Thy Lord hath ordained to worship him alone; and to honour your father and mother, especially in their old age; and say nothing to them that may afflict them; neither vex them; speak to them with respect; do not condemn them; pray to God to compassionate them, as they have pitied you, when they brought you up in your infancy." *Chap. 2.*

This virtue of reverence to parents is so well described, that for this alone no one ought to treat a Mahometan with contempt.

CHAP. XV.

GAOLS, TRIALS OF PRISONERS AT THE QUARTER
SESSIONS, RIOTS, AND REBELLIOUS ASSEMBLIES.

*CHARGE to the Grand Jury at the Assizes held at
Wisbeach, for the Isle of Ely, June 1, 1819.*

GENTLEMEN OF THE GRAND JURY,

THOUGH the number of the Commitments in the Calendar is not great, yet I am sorry to see that there are some crimes of such a serious nature, that if they are fully proved against the prisoners, they will be likely to suffer the extreme extent of punishment which the law enables me to inflict.

Two of the prisoners will be indicted for burglary, that is, for breaking and entering, in the night-time, into a dwelling-house, with an intent to commit a felony.

All these circumstances must concur to establish the crime of burglary. It may, perhaps, not be proved that the crime was committed in the night-time,

time, which is one hour after the setting, and one hour before the rising, of the sun.

The night-time near the longest day must be very short. The law has therefore wisely provided, from the difficulty of proving a burglary, that if any person takes another's property in a dwelling-house, when there is any one within the house who is put in fear, the criminal shall suffer the same punishment as if he had been guilty of burglary.

There is also another statute, which enacts, that if any one shall steal in a dwelling-house at once property of the value of 40s. or more, at any time of the night or day if convicted, he shall likewise receive sentence of death.

These, in my opinion, are wise and excellent statutes; because, in every case in which the property of another is invaded in a dwelling-house, the life of the owner, or of some of the inmates, is put in danger, of which the case before the Court affords a very striking instance.

But you, Gentlemen of the Grand Jury, cannot take into your consideration any circumstances beyond those which satisfy the legal description of the crime charged in the indictment.

At

At the last assizes at Ely, I took much pains to convince the Grand Jury, and the Magistrates there present,—and I have reason to believe that I not only convinced them, but I have convinced the greatest part of those who have had an opportunity of perusing my observations upon that occasion,—that any material change of the Criminal Law will produce a serious increase of crimes, and a lamentable augmentation of human misery.

Yesterday, as I came through Ely, I visited, with a Gentleman in the Commission of the Peace, the Gaol and House of Correction there. We were happy to find every thing in each that could contribute to the health, comfort, and reformation of persons who are placed there for punishment. Those committed for trial had been brought to this place. Our gaol does great credit to the gaoler, the Lord of the Franchise, and all the Magistrates. Upon the subject of Prisons, as well as upon the Criminal Law, there has been the greatest misrepresentation and delusion.

I hold in my hand a very pompous description of the gaol at Ghent. After describing the regulations adopted in that prison, the writer breaks out into the following observation.

“ When I contrasted this enlightened system,
which

which has so long flourished, and produced such excellent effects, with the savage Code of my own country, and the horrid management of our prisons, my mind was agitated with conflicting sentiments of delight and indignation."

Is this written with an Englishman's hand, an Englishman's head, or an Englishman's heart? The only apology that can be made for it is, deplorable ignorance; for of all our laws, those which have been enacted for the regulation of gaols and houses of correction, are the most perfect and complete.

They are such, that, I conceive, neither the wisdom of any individual Member in either House of Parliament, nor the united wisdom of the Legislature, can add a single article of improvement. You will find them in the Statute Books, in the years 1782, 1784, and 1791; viz. the 22 *Geo.* III. c. 64; the 24 *Geo.* III. c. 54; and the 31 *Geo.* III. c. 46.

The Magistrates of this Isle, and of every County, need only peruse those; and they will see that our system of laws upon gaol discipline is equal at the least, probably far superior, to those of every other country in the world. And in the gaols of all the Counties I am acquainted with, as Lancashire,

cashire, Yorkshire, Cambridgeshire, and Hertfordshire, they are now carried into effect to the highest practicable degree.

The writers upon gaols seem to be quite ignorant of those excellent laws; or they wish their readers to remain ignorant of them: for they state all the provisions of our excellent statutes—classification, labour, cleanliness, health, and religious instruction—as if they were their own inventions only, though they have been all provided for with the greatest minuteness and particularity, these thirty or forty years.

They draw highly-coloured and finished pictures of some gaols abroad; and exhibit to our view a most horrid and disgusting representation of some private prisons in England.

It would certainly be very desirable that all private prisons, or prisons for small Liberties, should be entirely abolished.

These writers upon gaols do precisely the same injustice to our laws, and to our public Institutions, as the Persian or any other Ambassador would do to our fair countrywomen, if he had been ordered by his Sovereign to send him portraits of the most beautiful and well-dressed ladies of the countries through which he travelled, and to which he was

was sent ; and, as specimens of the greatest Beauties in the most elegant attire admitted to the Court of the Prince Regent of England, he should send home the pictures of two of the most hideous and loathsome female figures he could find in the purlieus of Billingsgate or St. Giles.

I should particularly advise those who visit the University of Cambridge, and are struck with the noble monuments of ancient architecture, to proceed to view and examine the County Gaol ; and they will be delighted with a modern building, beautiful and elegant in itself, erected in every respect conformably to the statutes upon the subject, and where all the excellent regulations prescribed by those statutes are carried into full effect.

One of the most scrutinizing Visitors of gaols candidly admits, that in Bury Gaol there is every thing to praise ; and what is still more wonderful, he can discover nothing which he can blame.

The gaol for the County of Cambridge is an exact counterpart of the Gaol of Bury for the County of Suffolk. The gaolers are brothers ; and are equal in their humane treatment of their prisoners, and their gentlemanly manners and conduct.

When we express our admiration and gratitude
for

for the munificence displayed in the noble erections in the University, for the encouragement of religion and learning, our minds cannot but be cheered with the spirit and generosity which have suggested and completed such a sumptuous neighbouring building, to secure obedience to our Government and to our Laws : and let us bear one of our inevitable burthens with more patience, when we reflect that all such buildings, or additions to them, must be paid for out of the Poor Rates of every parish.

By an Act of Parliament in the 27 *Geo.* III. c. 11. Justices of the Peace may commit all vagrants and criminals charged with or convicted of minor crimes, either to the county gaol or to a house of correction.

The object of this statute seems to have been, that the numbers in each might be properly balanced, and that neither might be crowded to excess.

Some years ago, when I attended the Sessions, as a Barrister, in the most populous towns of Yorkshire and Lancashire, the Justices there never tried any felony, but petty larceny. The thing or things stolen, though they might be worth 100*l.* or 500*l.* were stated to be of the value of one shilling or ten-pence.

The Court, in that case, had the same power to transport for seven years, as they have in cases of grand larceny; and they had the power to punish to a greater extent by imprisonment, than if the indictment had stated their real value*. But now I find, that, in these counties, and everywhere, the Justices, at their Sessions, not only try grand larceny, but every other crime which is not punished with death.

There is some apparent inconvenience in this; because every one, who is tried for a felony, for which he has the benefit of clergy, or what is now called "the benefit of the statute," he ought to be asked, when he is found guilty by the jury, What he has to say why judgment of death should not be pronounced against him according to law; and he is told to kneel down and to pray the benefit of the statute; and if he has ever in the course of his life, for any crime whatever, had that benefit before, the prosecutor may file a counterplea, stating that fact; and if the prisoner by his replication denies that

* For petty larceny, the imprisonment may be three or five years, or any time at the discretion of the Court, either in a gaol or house of correction; but for grand larceny, the imprisonment can only be for one year in a gaol, or two years in a house of correction. This apparent incongruity is easily explained, by tracing the history of the subject.

that fact, or that he is the same person, a jury must be impanelled and sworn ; and if they find that he is the same person who has had once before the benefit of clergy, the Court must then pronounce judgment of death : And without the King's pardon, he is subject to the execution of the sentence. There have been several instances at the Old Bailey where such a counterplea has been filed, and the prisoner in consequence has received sentence of death. The prisoner in such cases has not been left for execution ; but by such a proceeding the Crown has had the power of transporting him for life, by granting a pardon upon that condition, where without it there was no power to transport at all, or a power of transporting only for seven years.

If the Justices at the Sessions were to try all clergyable felonies, and this proceeding were to take place there, they would be called upon and bound to pronounce judgment of death. But this proceeding is so rare, that I never knew an instance of it before the Judges in the country ; and if the prosecutor intended to resort to it before the commitment, he ought to acquaint the Magistrate, that he might commit the prisoner to be tried at the Assizes : and if such a counterplea should ever be filed at the Quarter Sessions, I should advise the Magistrates to adjourn all

the proceedings till the next Sessions, within which time they might be removed into another Court.

I do not see, then, any objection to the trial of all crimes at the Sessions upon which sentence of death must not immediately be pronounced by the Court.

The Justices out of Sessions may certainly bind over the prosecutors to prefer their indictments either at the Assizes or the Sessions, in all such felonies, and in all cases of misdemeanour, except only perjury and forgery, by the common law. I cannot find, at present, that the Justices have any rule or principle by which their commitments are regulated: they probably give a preference to the Sessions or to the Assizes, just as they are influenced by their own convenience, amusement, or, perhaps, individual consequence. This last is a most commendable motive, when it produces a zealous emulation to promote the public good.

It is very desirable that every Magistrate should be present at the trial of the prisoner he has committed, unless he is prevented by some serious private business; not for the purpose of assisting the Judge or the Court against the prisoner, but of assisting the prisoner, by suggesting to the
Judge,

Judge, if he should observe it, that the witnesses do not swear in Court as they did before him ; and then the depositions, or his parole testimony, would be material evidence for the prisoner.

I am quite convinced, that, of all crimes which the Sessions have the power to try, the trial and the judgments have a much greater effect than they have at the Assizes ; because the Magistrates are better acquainted with the state of the country and with the characters of the prisoners ; and the Judges, after the trials for murders, burglaries, forgeries, robberies, rapes, &c. cannot possibly bestow the same proportionate attention upon minor crimes which they really deserve ; and if these are not effectually crushed, they will probably become matured into crimes of a larger size.

If such offenders were committed to the Sessions for trial, they never could lie in a prison more than three months before trial, by which the number of prisoners in the gaols and houses of correction would be greatly reduced. I should therefore recommend to all Magistrates, to adopt it as an invariable rule to commit all felons clearly not guilty of capital crimes, and all persons guilty of misdemeanours which can be tried at the Sessions, to the first Court of Sessions or Assizes which will be held after the date of the commitment. It will greatly
ease

ease the labour of the Judges, the punishment will be more efficacious by being more prompt; it will lessen the number of prisoners in the gaols and houses of correction, by making, in all those cases, six Gaol Deliveries in the year, instead of two; and by the general adoption of this practice the laws are more likely to be respected, and the quantity of crime and misery throughout the whole kingdom greatly diminished.

CHAP. XVI.

THE LAW UPON RIOTS AND REBELLIOUS ASSEMBLIES.

Continuation of the CHARGE.

GENTLEMEN OF THE GRAND JURY—

I LEARN from the depositions returned to me, as the parties are bailed, and therefore not in the Calendar, that a Bill will be preferred before you for an unlawful assembly, or a riot, or for an incitement to produce a riot.

Upon that subject, I shall trouble you with some observations.

A riot in law must be committed by three or more.

But it fell to my lot, some years ago, when I attended the Sessions at Manchester, to prefer an indictment for the solicitation or incitement to commit a crime, which in fact was not committed. It was the first indictment of the kind that ever was preferred in any Court ; and after two arguments in the Court of King's Bench, Lord Kenyon and the Court held, that it had always been a misdemeanour
by

by the Common Law of England, that is, by a law more ancient than any Act of Parliament in existence.

So, an incitement, solicitation, or instigation to commit a riot, or a breach of the peace, is an indictable crime; and the offender or offenders guilty of it will always be punished by me with the greatest severity.

I am happy and proud to say, that I believe this Isle is as free from the seeds of sedition and disloyalty, as any part of the King of England's dominions.

But it is absolutely necessary to check, at its first appearance, the turbulence of unruly spirits.

It is a wise Oriental proverb, that you may stop a fountain with a bodkin, which, if permitted to flow, will soon carry away a camel and its burden: or, what many of you, Gentlemen, have reason to know, when your rivers are filled by extraordinary floods, if the water once forms a small rill or streamlet over the top of the bank, which a single turf or spadeful of earth would have stopped—if it continues to flow, in a few minutes it will become deeper and deeper, till the torrent carries away the strongest bank raised upon the broadest basis, and the inundation sweeps away the crops of many thousand acres:—so, if the banks of the Law once begin to be broken down, if the breach is not immediately

mediately repaired by the Civil power, such an inundation of crime may be the consequence, that the whole power of the Government must be exerted to stop the progress of the ruin and devastation.

The Magistracy and the Civil Power must be assisted and supported by all who have a just regard for their own lives, liberty, and property.

The constable's staff is the ensign of English liberty: when that is broken and trampled in the dust, we must inevitably become, either the prey of the most savage of all wild beasts, a lawless man, or the most abject and degraded of slaves, viz. those of a military despotism*.

The Law upon RIOTS, with Observations in addition to the CHARGE.

An indictment was preferred in the case referred to in the Charge, but the Grand Jury returned no true bill. I consequently did not know what the indictment charged, or what evidence was given before them in support of it. But the depositions returned to me by the Magistrates, compelled me to make the foregoing observations upon the subject.

It particularly belonged to the subject of Riot, which
Dalton

* This part of the Charge I have placed at the end, that it may immediately connect with the Law upon Riots subjoined.

The Charge was delivered on June 1, 1818, when the subsequent rebellious assemblies in London and the North were not thought of, to which perhaps it will be thought more aptly to apply, than the comparatively trifling case within my jurisdiction, which certainly was quite unconnected with sedition or Revolutionary designs.

Dalton, Hawkins, and all the best writers say, is a meeting upon a *private* subject, with force, violence, and circumstances of intimidation; and there is very little said in the books, what will be the consequences where there is a meeting to take into consideration public national concerns, and when those who meet would clearly be guilty of a riot, if the occasion of the assembly had been of a private nature.

In all such cases, the parties attending such an assembly must be guilty either of high treason, or of a misdemeanour of a much higher nature than that of a common riot.

Lord Chief Justice Hale has called such a meeting, when it does not amount to high-treason, a *great riot*, or a *rebellious assembly*.

The two following sentences will shew the opinion of that learned man, when and under what circumstances the parties in a public assembly may be guilty of high-treason.

“What shall be said a levying of war, is partly a question of fact; for it is not every unlawful or riotous assembly of many persons to do an unlawful act, though, *de facto*, they commit the act they intend, that makes a levying of war; for then every riot would be treason, and all the acts against riotous and unlawful assemblies, as 13 H. IV. cap. 7. 2 H. V. cap. 8. 8 H. VI. cap. 14. and many more, had been vain and needless; but it must be such an assembly as carries with it *speciem belli*, as if they ride or march, *vexillis explicatis*, or if they be formed into companies, or furnished with military officers, or if they are armed with military weapons, as swords, guns, bills, halberds, pikes; and are so circumstanced, that it may be reasonably concluded they are in a posture of war; which circumstances are so various, that it is hard to define them all particularly.

“Only the general expressions in all the indictments of this nature, that I have seen, are *more guerrino arraiati*, and sometimes other particulars added as the fact will bear, as *cum vexillis explicatis*, *cum armis defensivis et offensivis*, *cum tympanis et tubis*: but although it be a question of fact, whether war be levied or conspired, which depends upon evidence,

evidence, yet some overt act must be shewn in the indictment, upon which the Court may judge; and this is usually *modo guerrino arraiati, or armati*, or conspiring to get arms to arm themselves."—1 *Hale*, P. C. 149.

Judge Foster, a more modern writer upon law, and who bears the highest character for being a sound lawyer, and also for being a friend to the liberty of the people, thinks Lord Hale too lenient in his distinction between levying war against the King, which is high-treason, and a conspiracy to levy war, which is a great misdemeanour only punishable by fine and imprisonment.

His words are these:

"Lord Chief Justice Hale, speaking of such unlawful assemblies as may amount to a levying of war within the 25 *Ed. III.* taketh a difference between those insurrections which have carried the appearance of an army, formed under leaders, and provided with military weapons, and with drums, colours, &c., and those other disorderly tumultuous assemblies which have been drawn together, and conducted to purposes manifestly unlawful, but without any of the ordinary show and apparatus of war before mentioned.

"I do not think any great stress can be laid on that distinction. It is true, that in case of levying war, the indictments generally charge, that the defendants were armed and arrayed in a warlike manner; and where the case would admit of it, the other circumstances, of swords, guns, drums, colours, &c. have been added. But I think the merits of the case have never turned singly on any of these circumstances."—*Foster*, 208.

And he proceeds to say—

"But every insurrection, which in judgment of law is intended against the person of the King, be it to dethrone or imprison him, or to oblige him to alter his measures of government, or to remove evil Counsellors from about him,—these risings all amount to levying war within the statute, whether attended with the pomp and circumstances of open war or not. And every conspiracy to levy war for these purposes,

purposes, though not treason within the clause of levying war, is yet an overt act within the other clause of compassing the King's death; for these purposes cannot be effected by numbers and open force without manifest danger to his person.

"Insurrections, in order to throw down all inclosures, to alter the established law or change religion, to enhance the price of all labour, or to open all prisons; all risings, in order to effect these innovations of a public and general concern by an armed force; are, in construction of law, high-treason, within the clause of levying war. For though they are not levelled at the person of the King, they are against his royal majesty; and besides, they have a direct tendency to dissolve all the bonds of society, and to destroy all property and all government too, by numbers and an armed force. Insurrections likewise for redressing national grievances, or for the expulsion of foreigners in general, or indeed of any single nation living here under the protection of the King, or for the reformation of real or imaginary evil of a public nature, and in which the insurgents have no special interest; risings to effect these ends by force and numbers, are, by construction of law, within the clause of levying war; for they are levelled at the King's Crown and Royal Dignity."—*Foster*, 210.

The learned Judge Foster has expressed this with so much confidence, that future Judges would agree with him, that he seems to exult in differing both from Lord Hale and from Lord Coke; for he adds the following note:

"*The Summary*, p. 13. (Lord Hale) layeth down a different rule, and so doth 3 *Inst.* 14, (Lord Coke). *But the law is mistaken in these books.*"

I have stated what I find laid down by the highest judicial Authorities, respecting levying war against the King, high-treason, or a conspiracy to levy war, a great misdemeanour.

But a conspiracy to change the laws by force and violence; a conspiracy to revile and degrade the laws and government of the country; a conspiracy to induce the subjects to withdraw their obedience from the laws and government; a conspiracy

spiracy to learn to march and to learn military exercises with intent to resist the civil officers of the Government; all these, when they are not thought to come within the law of high-treason, are offences of the like nature by the common law; and every Court must punish a party found guilty of any of them, in proportion to the danger which it thinks the crime produces to the tranquillity and happiness of the rest of his Majesty's subjects.

Lord Hale afterwards considers this important question; viz.

"If there be a *great riot or rebellious assembly*, how far the killing of such persons in suppressing of them is criminal, is to be seen."—1 *Hale*, P. C. 495.

He then recites a statute which was passed in the first year of Queen Mary, and which expired at the death of Queen Elizabeth. It was a statute to prevent Meetings to procure a change in the laws respecting religion, by force and violence. Lord Hale recites part of it, though it had expired, which enacts,—

"That if twelve persons, so unlawfully assembled after request by proclamation, shall continue together; and if any of them happen to be killed in or about the suppressing or taking them, the Sheriff, Justice, Mayor, and their assistants, shall be discharged and unpunishable for the same against the Queen and all others."

He then proceeds in his own words, thus:—

"And it seems, as to this manner of killing rioters that resist the ministers of justice in their apprehending, it is no other but what the common law allows; or at least what the statute of 13 H. IV. cap. 7. implicitly allows to two Justices of the Peace, with the Sheriff or Under-Sheriff of the County, by giving them power to raise the *posse comitatus*, if need be, and to arrest the rioters; and they are under a penalty of 100*l.* if they neglect their duty herein."

And with this agrees Mr. Dalton, cap. 46. p. 115. cap. 98. p. 249. and *Crompt. de Pace*, 62. b.

"Nota, que Viscount et Justices de Peace point prendre
tants

tants des hommes in harneys, quant sont necessary, et guns, &c., et tuer les rioters, sils ne voilent eux rendre, comme fuit pris in case de Drayton Basset, car le statute 13 *H. IV.* cap. 7. parle; quils eux arrestent; et si les Justices ou ascuns de leur company tue ascun des rioters, que ne voil rendre n'est offence in lui, come fuit auxi prise in le dit case de Drayton Basset.

"And note, that though the statute of 1 *Eliz.* was then in force, yet that was not a case within that statute, nor depending on it.

"And it seems the same law is for the constable of a vill. In case a riot happens within a vill, he may assemble force within his vill to arrest the rioters; and if he or those assembled in his assistance come to arrest the rioters, and they resist and be killed by the constable or any of his assistants, the constable and his assistants are dispunishable for the same; for he is enabled hereunto by the common law, as being an officer for the preservation of the peace, and may command persons to his assistance; and if they refuse, they are fineable for it.

"And farther, the statute of 17 *R. II.* cap. 8. commands and authorises the King's Ministers to use all their power to take and suppress such riots and rioters; and a constable is the King's Minister: and the statute of 13 *H. IV.* cap. 7. is no repeal of this statute; so that the killing of a rioter by a Sheriff, Justice of Peace, or Constable, when he will resist and not submit to the arrest, seems to be no felony at common law, nor makes any forfeiture; for they do but their office, and are punishable if they neglect it."—1 *Hale*, P. C. 495.

This is clearly laid down by that great and humane Judge, Chief Justice Hale, who everywhere cites Dalton and Crompton with approbation.

Crompton has said shortly—

"That a Sheriff, or Justices of the Peace, come to suppress rioters, and one of them who come with the Sheriff or Justice is killed by one of the rioters; this is murder, as well in him as in all the other rioters who are present; and so it was taken in the case of Drayton Basset, 22 *Eliz.*"

This was held in that case, if the Sheriff, or any one that comes

comes with him, kills any of the rioters, who resist, that it is no offence in him.—*Crompt.* 236.

Crompton has also said, that,

“Home vient al Sessions ou al market ove ses servants in harneis, comment que son intent nest a faire ascun riots, uncore est riot pur le maner de lour vener.”—62. a.

That is, “A man comes to the Sessions or the market with his servants in armour, although his intent is not to make any riot, still it is a riot by the manner of their coming;” and for this Crompton cites Marrow, a Master in Chancery, whose Lectures in Manuscript are of the highest authority upon these subjects.

This is surely good sense and good law, which I should recommend to the consideration of all Magistrates, and which, as long as I live, I shall adopt myself in every place where I have the authority to act as a Magistrate. Wherever a Meeting is convened for the discussion either of a private or a public subject, and any one or more persons come to it with banners, caps of liberty, drums, or military music, or any stick or staff, which they would not use in going to church, to a court of justice, to market, meeting-house, to any place of divine worship, to a friendly society, or to any pacific and sociable congregation of persons of either sex, I should treat such persons, and all who encouraged them, as rioters; and if the Meeting were to take into consideration a proposed change in the laws and the government of the country, I should consider them infinitely more dangerous rioters, than if the subject had been of a private nature.

How such rioters, and all rioters, may be treated by one or more Justices, is very clearly stated both by Crompton and Dalton.

Crompton says,

“Un Justice poits prendre royotterers, et poet eux imprisonner, et eux lyer al bon port, per 34 *Ed.* III. c. 1.”—*Crompt.* 1-63. a.

That is, “One Justice may apprehend rioters, and may imprison

prison them; and may bind them to their good behaviour, by 34 *Ed. III. c. 1.*"

Dalton says,

"There is no doubt but that the Justices of Peace, (without the Sheriff or Under Sheriff) upon all riots, may and ought first to go to the place; and such rioters as they shall see or find riotously assembled, they may and ought to arrest them, and to take away their armour and weapons, and to remove and commit the rioters, or may cause them to find sureties for the peace or good behaviour; and for want of such sureties, may commit them to the gaol. All which one Justice of Peace may do."—*Dalton, c. 82.*

If a Member of the House of Commons, or the first Nobleman in the land, were so acting as a rioter, every Justice may and ought to bind him to keep the peace, and may bind every other person to be of good behaviour; and for want of sufficient sureties, may commit them to gaol or to the house of correction. All this is the ancient law of the land. It is quite a vulgar error, that the power to suppress riots depends upon the 1 *Geo. III. c. 5.* generally called the Riot Act.

In the first year after the accession of the present Family to the throne, and before the Rebellion in the year 1715, the kingdom had been disturbed by riotous meetings; such as may be called rebellious assemblies; and all who were present at them might have been dispersed, apprehended, and treated as is before explained: but that this might be done more effectually in future, it was enacted, that if any twelve or more were assembled in a riotous manner, and if any Justice should approach them, and make the proclamation prescribed by the statute, if they did not disperse within one hour afterwards, each individual of the riotous assembly was liable to suffer death.

The constables had, before this statute, precisely the same power to disperse the rioters, and had the same power of calling others to their aid and assistance, as they had after it.

What Hawkins has said upon this subject is equally true, whether the Riot Act has been read or not read.

"In

"In some cases (he says), wherein the law authorizes force, it is not only lawful, but also commendable, to make use of it; as for a Sheriff or constable, or perhaps even for a private person, to assemble a competent number of people, in order with force to suppress rebels or rioters, and afterwards with such force actually to suppress them." B. 1. c. 63. s. 2.

Can then the Justices, the Sheriff, or the constables call in a military force, to assist them in suppressing a riot or rebellious assembly, and in apprehending the persons guilty of it?

It has long been determined, that a military force may be called in to assist the execution of a legal power by civil officers. The Serjeant at Arms called in soldiers to assist him in breaking into the house of Sir Francis Burdett, in execution of the Speaker's Warrant, and to aid him in conveying Sir Francis to the Tower.

That was declared to be legal by the Court of King's Bench; and upon a writ of error to the other eight Judges, Sir James Mansfield expressed their unanimous opinion in the following words:—

"Since much has been said about soldiers, I will correct a strange mistaken notion which has got abroad, that because men are soldiers, they cease to be citizens. A soldier is gifted with all the rights of other citizens, and is bound to all the duties of other citizens, and he is as much bound to prevent a breach of the peace or a felony as any other citizen. In 1780, this mistake extended to an alarming degree; soldiers with arms in their hands stood by and saw felonies committed, houses burnt and pulled down before their eyes, by persons whom they might lawfully have put to death, if they could not otherwise prevent them, without interfering; some because they had no commanding officer to give them the command, and some because there was no Justice of the Peace with them. It is the more extraordinary, because formerly the *posse comitatus*, which was the strength to prevent felonies, must in a great proportion have consisted of military tenants, who held lands by the tenure of military service. If it is necessary

for the purpose of the preventing mischief, or for the execution of the law, it is not only the right of soldiers, but it is their duty to exert themselves in assisting the execution of a legal process, or to prevent any crime or mischief being committed. It is therefore highly important that the mistake should be corrected, which supposes that an Englishman, by taking upon him the additional character of a soldier, puts off any of the rights and duties of an Englishman. We are therefore of opinion, that plea is sufficient, and that the judgment must be affirmed."—*Burdett v. Abbott*. 4 *Taunton's Reports*, 449.—1812.

This is now so fully and clearly established, that no professional man will ever again attempt to controvert it. What I have collected upon this important subject has been the law for many ages past, and will be the law for all ages to come, if it is not reversed by the united authority of the King, Lords, and Commons, in Parliament assembled. God forbid that Justices of the Peace should ever exert a vigour beyond the law! and God forbid that they should neglect to exercise their legal power, to prevent the exertion of such a vigour by desperate individuals!

The anarchy on the one side, is more to be dreaded, than the tyranny on the other.

Good laws ought perpetually, or as often as there is a just occasion, to be brought into action. If they are permitted to sleep for a while, the enemy, by vigilance and union, becomes so strong and powerful, that it is a difficult matter to overcome a numerous body, where one or a few at a time could easily have been crushed and subdued; and where numbers are encouraged in their progress by an infinity of audacious mischief-makers, who deny the existence and energy of indisputable legal authority, merely because it has rarely been brought into public view.

I WAS advised to publish in the *Courier*, on the 15th of September last, the above part of the Charge, with the Law upon Riots annexed. It made, I was happy to learn, a great impression, both in England and Scotland; and I am still more happy in now being convinced that no learned man can find any law to the contrary.

All that I have found upon the subject is confirmatory of what is here stated; but not being of higher authority, I have not thought it necessary to make many additions. Much may be seen in *Hawkins* and *Pulton*, *de pace Regis et Regni*. From the latter I shall make the following extract, though the substance of it is contained above.

“If a man go to the Sessions, market, fairs, or other assembly of company, with his servants in harness, though he hath no intent to fight or to commit any riot; yet this is a riot, by the manner of his coming; and is contrary to the Statute of 2 *Edw. III.* which hath ordained, that no man shall bring any force for affray of the peace, nor shall go armed, in fairs, markets, or elsewhere, upon pain of imprisonment and forfeiture of his armour,” *Pulton*, 25.

It is now fully established, that he who advises another to commit a misdemeanour, or who does

any act, or makes a preparation to commit or assist in a misdemeanour, is guilty of a misdemeanour or indictable crime.

Whoever has arms, either publicly or privately, unsuitable to his rank in life, especially if they are concealed about his person, and if he cannot give a satisfactory account how and for what legal purpose he procured them or is possessed of them, every Justice and every Jury may presume that he acquired them for the purpose of committing a riot or rout, as described by Pulton: and if he is prosecuted, the Jury may find him guilty, and in every such case the Justice may commit him till the next Sessions or Assizes, or may hold him to bail, and in the mean time to be of good behaviour; and it is not necessary that he should bind any one over to prosecute.

Every professional man, or every Englishman, may at all times state what he conceives to be the law upon any subject; because that ought to remain invariably the same, and the trial of no one can be affected by the free discussion of it.

The application of the facts to the law, by which all must be declared to be innocent or guilty, I leave to the proper tribunals to try and decide upon.

We

We may also suppose facts, whether they have existed in the past time or shall ever exist in future, to which we may declare how we should apply the law, or how we should advise all Justices of the Peace to apply the law, if meetings should be convened consisting of many thousands ; for the number is a great circumstance of terror, where the professed object of the meeting is to overthrow the fundamental, ancient, and venerable laws of their country ; where they march to the place of meeting in thick columns, in martial array, with a military step which they must have learned by long exercise, with bugle-horns and military music playing tunes uncontrovertibly indicating their revolutionary designs, carrying numerous flags flying, with such terrific inscriptions as have never yet been used in civilized war ; some red, to denote blood ; some black, to denote death ; some tri-coloured, to represent the Revolution of France, with all the horrible representations of daggers, and murders committed ; mottoes, such as “ Liberty or Death ;” “ Equal Suffrage or Death ;” “ Let him who hath no sword sell his garment and buy one ;” and, what has been considered by some as the most frightful of all, “ Vengeance !” and where, if ever a County Member, or a Justice of Peace, should attempt to convince them of their error, he is hooted and silenced, and has nothing left but the
alternative

alternative expressed on their standard, of equal suffrage or death ; death to the opposer or supporter of it, or to both ; and death to all who will not assent to the liberty to be chosen by an ignorant rabble, where women are invited to attend with Caps of Liberty, such as were the actresses and symbols of the murders and massacres perpetrated in France : I say, whoever presides at such a meeting, whether he is a Prince of the Blood-royal, the first Nobleman in the kingdom, County Member, a Justice of the Peace, or a desperate adventurer, stranger, or native in the county ; can any lawyer, can any man of sense say, that such meetings are not rebellious assemblies, repugnant to the law of England, destructive of all the security of life, liberty, and property, and a scandal and disgrace to the Government of that country in which they are permitted to exist.

Though we have lately been stunned with reading representations of assemblies, where almost all these shocking indications of criminal designs were combined, yet I can assure every Magistrate, that a single one of them would be quite sufficient for him to disperse such a meeting, or to apprehend, either on that day, or at any distance of time afterwards, every actor in it, who
had

had consented to, assisted in, or instigated, that criminal circumstance, and to treat him as one who had been guilty of a great misdemeanour.

There is no limitation of time to the prosecution of such an offence; but the witnesses will have more credit, and the punishment more effect, the earlier the complaint is made after the transaction.

Lord Mansfield, upon the trial of Lord George Gordon, declared, that it was the unanimous opinion of the Court, that an attempt, by intimidation and violence, to force the repeal of a law, was a levying war against the King, and high-treason. *Doug.* 570, 2d. Edit.

Lord Mansfield, I should think, has used the words, "intimidation and violence," as synonymous, or nearly so: he should have used the disjunctive *or*, instead of *and*.

For surely it would be high-treason, if the attempt were made by intimidation resulting from a great number armed with artillery, or with swords and muskets, or with pikes and pistols, though no one was struck or fired at.

So also it must be a rebellious assembly, if a great number meet with such arms, though they
all

all disperse quietly, and return to their respective homes.

The standing-army of a rabble mob is ten thousand times more dangerous to public liberty, than the standing army of a crowned head.

I thought, at the time, and have thought ever since, that it was a great misfortune to this Country, that the Act of Parliament to restrain Seditious Meetings, at the conclusion of the Peace with France, was permitted to expire.

The following observations upon it, I published in a Note to Blackstone's Commentaries, many years ago.

“ The seditious meetings which were held before the passing of this statute, were, in fact, temporary insurrections, and a scandal to any regular government; and however vehement the arguments of some, but principally of those whom it was intended to restrain, that public liberty was endangered, yet it ought to be remembered, that public liberty cannot exist without public security. The ancient Constitutional meetings for the investigation of public affairs, with which our forefathers were contented, were not in the smallest degree affected by this statute.

“ A public

“A public meeting might at any time be called to take into consideration the state of the nation, or the conduct of the King’s Ministers, by a Lord Lieutenant, Custos Rotulorum, Sheriff of a County, a Convener of a County or Stewartry in Scotland, Two Justices of the Peace, the major part of a Grand Jury either at the Assizes or Quarter Sessions, the Mayor or head officer of any city or town corporate, or the Alderman or head officer of any ward or division, or any corporate body.

“All these might, in their respective jurisdictions, call public meetings which had the same uncontrouled power of discussion as they had before the statute.

“Could then any wise and well-intentioned Englishman say that his liberty was violated by this valuable statute.”

CHAP. XVII.

RIOTS IN THE ISLE OF ELY.

AT the Special Assizes held at Ely, on Monday the 16th of June, 1816, before the Honourable Mr. Justice Abbott, now Chief Justice of the King's Bench, the Honourable Mr. Justice Burrough, and Edward Christian, Esq. Chief Justice of the Isle, after the trial of the rioters, and sentence pronounced upon them, on the Saturday following, the Judges retired, and left Mr. Christian to try a Boy, the only prisoner besides in the Calendar, for a trifling theft: he was found guilty, and before Mr. Christian pronounced the sentence upon him, he delivered the following

ADDRESS TO THE COURT,

which was afterwards printed, at the request of the Magistrates.

“ Before

“Before I pronounce judgment upon this poor Boy, found guilty of a trifling theft, I cannot but take this opportunity of observing to the Court, that he would have been the *only* prisoner we should have had for trial, if our Calendar had not been filled with the recent commitments for crimes of enormous magnitude. I trust they have arisen from a transient and temporary cause, which has made a short progress into the heart of the Isle: it includes a space of nearly forty miles square, containing a very numerous population. At several of my Assizes, I have not had a single prisoner to try; and have had the pleasure and the triumph to come into the Court, to charge, and at the same time to discharge, the Grand Jury, in white gloves, presented to me as the emblem of the innocence and purity of the Isle. Most of the unfortunate criminals, till the commission of these brutal outrages, have had the best characters, as peaceable and honest men.

“This induced one of the learned Judges justly to observe, upon the evidence of character, ‘That former good characters ought to have less weight upon

upon the present occasion, because the crimes we are called here to repress have originated from some great impetus or impulse, bursting forth in a manner inconsistent with the general habits and characters of the people.'

"In my inquiries into the original cause or motive of these extraordinary crimes, I find certainly, that they cannot be attributed to a spirit of disaffection to the Government prevailing in this Isle: since I have had a knowledge of it, I have never heard that a seditious meeting, publication, or expression, has existed with in that time, or ever did exist before my connexion with it: all hitherto have concurred in one sentiment of loyalty and reverence for the Constitution of their Country.

"The conduct of the Rioters cannot be attributed to want or poverty; the prisoners were all robust men, in full health, strength, and vigour, who were receiving great wages; and any change in the price of provisions could only lessen that superfluity which, I fear, they too frequently wasted in drunkenness.

"The great sums these deluded men levied by their shocking robberies, were not intended to afford assistance to their families; but were to be
spent

spent in liquor, and thus to be applied as fresh fuel to the flames of their fury.

“I have now had the honour of presiding here, as the Chief Justice of the Isle, for sixteen years; and in the course of that long period I have been called upon to pronounce judgment of death upon sixteen prisoners only: four suffered the execution of their sentence; ten were recommended to mercy by myself; and the other two, from the notoriety of their crime, would have suffered death, but, by the recommendation and interference of others, they obtained from the royal clemency that lenity which was refused to them by myself.

“I trust I have convinced the inhabitants of this Isle, that upon no occasion have I shrunk from a faithful discharge of my duty: they have frequently heard from this Bench, that ill-timed and misplaced lenity is cruelty, and that just severity is mercy and tenderness. All punishment of the guilty is intended for the security and protection of the innocent; and a well-measured degree of it, upon a just occasion, precludes the necessity of the infliction of it to a much greater extent in future, which the indiscreet indulgence to criminals would inevitably be found to demand.

“I most sincerely congratulate the Isle upon the
great

great decorum, propriety, and dignity, with which every part of the solemn business of these Assizes has been conducted.—Every one has been inspired with an ardent emulation to discharge his duty with fidelity, upon this awful occasion.

“It was particularly pleasing to me to see the Judges every day escorted to and from the Court by a numerous body of independent Gentlemen, as civil Officers, with white wands; amongst whom I recognized a Gentleman of great property, who last year filled the office of High Sheriff, for the counties of Cambridge and Huntingdon. Many of them I had not the pleasure of knowing, but all equally have deserved the thanks of the Isle and of their Country.

“Before I left London, I thought it my duty to assure men, high in office, that for the sixteen years I had presided in this Isle, I had never met with a single finding of a Grand Jury, a verdict of a Petit Jury, or a commitment by a Magistrate, which had not met with my perfect approbation.—To these men of high rank, and to the learned Judges with whom I had the honour to be associated in this Commission, I pledged my confident belief, that each of the Judges, upon their return to London, would be able to make the same declaration.

“I have

“I have not been disappointed—All ranks, the Chief Bailiff, the Deputy Bailiff, the Magistrates, the Grand Jury, the Petit Juries, the Constables, the Officers, and I may add the Counsel of the Court, have not only deserved my applause, but have commanded the respect and admiration of the learned Judges with whom I had the honour to sit upon this Bench.

“It was suggested to me in London—I trust from the best of motives, though the author of the suggestion has industriously concealed his name—that it would be more conducive to the great object of the Commission, and would be more respectful in me, if I declined my rotation of duty, and leave the trial of all the prisoners to them. I was of a far different opinion; and no power on earth would have compelled my compliance with a wish or suggestion which I conceived so degrading to myself, and so injurious to the administration of justice in this place*. It would have amounted to a confession,

* This was not said from any disrespect to authority; but neither the loss of my office, nor the loss of my life, would have induced me to accede to any proposal, which, in the opinion of the world, would have amounted to an admission that this insurrection was owing either to the inattention, or, I may say, inability, of myself, or of the active and intelligent Magistrates, whose co-operation I experience upon every occasion. It

confession by myself, that the present misrule was owing to the incapacity of your Chief Justice, and that he was insufficient to try such offenders in future. The senior Judge in the Commission, according to the established rule, began; every morning, and I have followed the other learned Judge

was suggested to me, that a short Bill should be brought in, to have the Rioters tried by juries from another county.

"Juries from another county!" I exclaimed: "There are not better Juries in any part of the world: the Juries in the county of Lancaster may be equal, but are not superior to them."

The village of Littleport, in which this riot commenced from a drunken rabble, is so far at one extremity of the Isle of Ely, that in it is a bridge over the River Cam, and one end of it rests upon the county of Norfolk.

The Isle of Ely is certainly not a country which exhibits many objects to engage the pen or the pencil of a Poet or Landscape Painter, besides its noble ecclesiastical edifices; but there is no part of England more opulent and independent. The Gentlemen Farmers there are possessed of capitals to an extraordinary extent. Their land fattens the largest bullocks, produces the richest dairies, and the most luxuriant crops of every kind, with the least labour and the least addition of manure. Through every town there is a most extensive inland navigation, communicating with the flourishing out-ports of Lynn and Wisbeach. This extensive union of agriculture and commerce renders the inhabitants of the Isle of Ely pre-eminently prosperous, civilized, and well educated. I predicted to the Judges, that they would not hear one provincial word within the Isle of Ely; they had only occasion to remark, that a butcher's cleaver is there called a *cliver*.

Judge every day, I trust, with no impediment or detriment to the public interest.

“By this line of conduct, I have convinced the people of this Isle, and His Majesty’s Judges, that if instances of such atrocious wickedness should ever again occur, I alone am prepared, and armed with sufficient power to inflict a punishment commensurate with the enormity of the guilt.

“Here I think it my duty to declare, that the learned Judges have treated me in particular, and every one with whom they have had communications, with a courtesy and kindness, equalled only by their learning and abilities, and the dignity of their characters.

“But a great responsibility now rests upon myself, and the Magistrates of the Isle. Every Magistrate who had an opportunity of approaching this furious mob, has shewn all the discretion, firmness, I may say heroism, that men could possibly possess, in endeavouring to restrain such violent outrages.

“The melancholy and lamentable scene just now exhibited in the Court—the solemn and impressive judgment pronounced upon twenty-four miserable and deluded men—the awful examples which must

soon be made, will, I hope, for ever extinguish all attempts to excite insurrection and rebellion within this Isle.

“I am entrusted with the high, transcendent, and extraordinary powers of holding an Assize, whenever, and as often, as I please: if therefore, Gentlemen Magistrates of the Isle, you ever apprehend and commit to our gaols, prisoners for those crimes which are most likely to be repressed by a prompt execution of the laws, upon a few days’ notice I shall attend you here, or at Wisbeach; and with the co-operation of the intelligent and discriminating Juries, and the firm and steady Civil Officers of the Isle, I am confident we shall soon restore security and tranquillity to its inhabitants.

“The Gentlemen of the Isle, who, with so great honour to themselves, and benefit to the country, unite in their own persons the characters of the Magistrate and the Divine, I am sure, will never fail to instil into the minds of all who hear them, that the great principles of all law, equity, and good government, are to be found in the sacred code of our Religion.

“A Chief Justice of the Common Pleas, in the reign of Henry VI. advanced from the Bench this great and incontrovertible truth,—“That the Scriptures

tures are the Common Law, upon which all other laws are founded." Let it then be the duty of all of us, in our respective stations, to recommend, upon all occasions, the study of that law, where we find the duty of every good subject comprised in a few words; viz. 'To fear God, and to honour the King.'

"Prisoner at the Bar,

"Your commitment and imprisonment, I hope, will have taught you this useful lesson,—that "Honesty is the best policy," and Dishonesty the worst. You will pay a fine of One Shilling to the King, and be then discharged."

CHAP. XVIII.

UPON THE LOYAL VOLUNTEERS OF THE ISLE.

*The CHARGE to the Grand Jury at the Assizes held
at Ely, on the 9th of March, 1804.*

GENTLEMEN OF THE GRAND JURY,

WHEN the Commissions were read last night, there was not a single prisoner in our gaol for trial. I understand one is brought in this morning, but not for an offence of a serious nature. This is the more remarkable, as there was not one person convicted at either of the two last Assizes; so that it is nearly two years since any one was punished for a crime within this very populous district of the Isle of Ely. It is a circumstance which reflects great honour upon the Magistracy and Clergy of the Isle, and also upon the honesty and good dispositions of its inhabitants. Indeed the few instances of severe judgments, which I have been obliged to pronounce in the course of four years, in which I have had the honour to preside here, have chiefly been in the cases of strangers, who came within this jurisdiction for the purpose of committing depredations. I should certainly recommend it to you, Gentlemen of the Jury, and to the more opulent part of this Isle, to
spare

spare no pains or expence in pursuing such offenders, and in bringing them to public justice; as you may be assured that there will always be the fewest crimes, where the opinion most prevails, that no crime can be committed with impunity.

Whilst I congratulate this Isle upon the exemplary purity and regularity of the conduct of its inhabitants, I cannot but take this opportunity of observing, that it is not less distinguished for its loyalty and patriotism. It gives me great satisfaction to be informed of the zeal, which pervades all ranks within this Isle, to promote the public security, and to bear their share of the public danger in this most alarming crisis.

I felt a peculiar pleasure in having reason to be convinced that the very respectable Field Officer, who is appointed to superintend this military district, does not confine his testimony of the merits of the Officers and privates in the Ely, Wisbeach, March, Whittlesea, Chatteris, Thorney, Stretham, Haddenham, and Sutton Corps of Volunteers, to his commendations upon the public parade. I know the proficiency of those respectable corps, as in every case it must be, is in exact proportion to their zeal and diligence.

I should earnestly exhort you, Gentlemen of the Grand Jury, and all Gentlemen of opulence within
this

this Isle, to continue to contribute by every means in your power to the general defence of the country. Continue to encourage your sons, your servants, and all over whom you have an influence, to learn the use of arms; and grant them as many opportunities as your agricultural and domestic concerns will permit, to perfect themselves in military exercises.

It is a slanderous aspersion upon the profession of arms, what we are sometimes told, that a soldier is fit for nothing else. It may be true of those, who by dissipation and profligacy are driven to the necessity of becoming soldiers; but, with respect to those who are induced by more honourable motives to learn the use of arms, I am convinced, from my own observations, that the direct reverse is the truth. I am convinced that the best servants will make the best soldiers, and the best soldiers the best servants.

In London, in the Universities, and everywhere, it is observed, that men, who bestow the greatest application upon business and study, are the most diligent, and the most expert in military exercises: the same principle of industry and honourable emulation actuates every thing they undertake. Do not think then that your business will be neglected by those, who are most ambitious of making themselves perfect as Volunteers.

We

We have lately heard it asserted, that an armed peasantry would contribute more to the safety of the country than the Volunteers. My mind is so constituted, as to compel me to suspect the sanity or the sincerity of those who could advance such a proposition, if these armed peasants are not to be disciplined, and to act in concert like the Volunteers.

It is in vain to expect that the progress of the French would be retarded by a few solitary rustics, as rooks are driven by the *field-keepers* from your corn.

But I should wish to see an armed Gentry of the country. I should wish to see every gentleman purchase arms for himself, and for all his inmates within a military age. It is of great importance that men of education should join and assist in the military exercises. Men of education will unite theory with practice; they will treat no part of the exercise with ridicule or contempt; they will be convinced that every part of it is founded in the most exact mathematical and philosophical principles; they will therefore enforce upon the less-informed the necessity of the strict, uniform, and incessant observance of every part of military duty; as skilful and cautious gamblers, when the stake is large, attend to the minutest

minutest circumstance, by which the success of the game is to be secured.

Our resources of defence, unless we hire foreigners to fight our battles, can only arise from our own population; that is, from our own manual and corporeal strength:—*that* corporeal strength can only be made serviceable against the power of the enemy, by compulsory measures, or by voluntary exertions.

Whatever portion of that strength is compelled, or entirely appropriated to military service, there is still an immense residuum, which may voluntarily lend its aid. And the safety of the kingdom surely becomes augmented, as the sum of the compulsory and voluntary force increases.

The contest is not now for foreign possessions, or extent of territory; but it is, Whether we shall exist as a nation; whether we shall continue to be governed by English Laws, and tried by English Juries; or become the slaves of the slaves of France.

In these awful and tremendous times, when we are threatened with destruction by a blood-thirsty enemy, men without arms, or the knowledge of arms, must be classed with the women and children
of

of the country: and it is to be hoped, that even these will have spirit enough to be ashamed of their society.

I dare venture to utter the observation in this place, where there are so few who can feel it as a personal reproach.

Every man who becomes familiar with arms, soon perceives, what those arms are capable of performing: he sees, that after a certain extent of exercise, in company with others, the difference in the management of them cannot be great.

I have heard many experienced Officers, who have been abroad, affirm, that the English perform every thing, preparatory to an engagement, with more dexterity and uniformity than the French. And the conclusion of the *last* war may instruct us how far our Regular Soldiers, at the least, are fit to meet them in the field of battle at the commencement of *this*.

I confess that I am one of those who possess what some call the vulgar prejudices of an Englishman. I never will believe that a Frenchman can be superior to an Englishman in arms, either by sea or land; and I am proud to say, that I carry my prejudices so far, that I cannot but consider

sider that man to be a coward who conceives such a sentiment; and little less than a traitor who expresses it.

The Volunteer Corps are always treated with the most respect by those who have the greatest information upon military matters. I have never conversed with a Regular Officer, who did not declare that the Volunteers are everywhere so well trained, that he would lead them into action with perfect confidence, if he had the same command and controul over them to which other soldiers are subject. This degree of proficiency can only be preserved and improved by constant and unremitting practice.

If the time should come (and many think it not far distant) when the Volunteers may be called upon to co-operate with the Regulars and the Militia of the country, I trust they will be found on the day of trial not to disgrace their associates and allies in arms. Where the French have hitherto gained victories, and carried terror, they have never experienced the united resistance of a nation of armed freemen.

If, after the immense preparations which they are making to invade us, they should reach our shores in numbers, the conflict for a while must
be

be distressing and terrible; but I think we may feel little apprehensions for the issue, when we remember we are Englishmen contending with Frenchmen—and with Frenchmen upon English ground. *We* are Freeman, fighting for the best of Governments, and the best of Kings;—*they* are Slaves, fighting for the worst government in the world, and the most odious of tyrants.

Englishmen march to protect their wives, their children, religion, liberty, property, and every blessing which is English:—*they* come to violate, to murder, to rob, and to destroy.

As it is impossible to foresee when we shall be free at least from the insolence of their menaces, let me exhort you never to cease to persevere in those vigorous measures, which you have adopted in this Isle for the defence of your country.

Do not be discouraged, if you see that others have not the spirit to follow your example with equal alacrity. *You* will be sufficiently rewarded by the effect of your services, and by the consciousness of having done your duty:—*they*, perhaps, will be sufficiently punished by the consciousness of having neglected theirs.

the present young generation, but I think we may
 find that the generation of the future will be
 more intelligent and more capable of
 understanding the true meaning of the
 word "freedom" than we are at present.
 I think we are living in a time of
 transition, and the future is full of
 hope and promise.

There is a great deal to be done in the
 world, and we must all do our part.
 I think we are living in a time of
 transition, and the future is full of
 hope and promise.

There is a great deal to be done in the
 world, and we must all do our part.
 I think we are living in a time of
 transition, and the future is full of
 hope and promise.

There is a great deal to be done in the
 world, and we must all do our part.
 I think we are living in a time of
 transition, and the future is full of
 hope and promise.

APPENDIX.

FORMS OF PRECEDENTS

REFERRED TO IN CHAP. VIII.

I.—Examination of a Vagrant.

Hertfordshire. { THE examination of A. O. a Rogue and Vagabond, taken on oath before me, E. C. Esq. one of his Majesty's Justices of the Peace in and for the said county, the ——— day of ——— in the year of our Lord ———

Who on his oath saith, That he has obtained a settlement in the parish of ——— by renting a tenement of 10l. a-year, and by residing upon it, or by hiring himself as a servant there, and continuing in the said service for more than a year [or as the case may be].

Taken and signed the day and year above
written, before me the abovesaid,

E. C.

A. O.

or

A. † O.

his mark.

OBSERVATION.—The Form in Burn says, the Justice must trace the history of the Vagrant's life. That is totally unnecessary: he has only to inquire of him what was his last settlement, and to state that only in the examination.

II.—Warrant

II.—Warrant to the Constable for whipping a Vagrant.

————— { To the Constable of ———

FORASMUCH as A. B. late of ——— in the county of ——— a Rogue and Vagabond, is duly convicted before me ——— one of the Justices of our Lord the King, assigned to keep the peace within the said county of ——— for that he the said A. B. did this day wander abroad and beg in the parish of ——— in the said county of ———. I do therefore hereby command you to strip, or cause to be stripped, the said A. B. naked from the middle upwards, and publickly to whip, or cause to be whipped, till his body be bloody; and afterwards to remove and convey the said A. B. according to the directions of the Pass herewith delivered to you. Given under my hand and seal at ——— in the said county of ——— the ——— day of ——— in the ——— year ———

III.—Commitment of a Vagrant to the House of Correction.

————— { To the Constable of ——— in the said County,
and to the Keeper of the House of Correction
at ——— in the said County.

FORASMUCH as A. B. late of ——— in the county of ——— a Rogue and Vagabond, is duly convicted before me ——— one of the Justices of our Lord the King assigned to keep the peace within the said county of ——— for that he the said A. B. did this day wander abroad and beg in the parish of ——— in the said county of ——— These are therefore to command you, the said Constable, to carry the said A. B. to the said House of Correction, and deliver him to the said Keeper thereof, together with this warrant: And I do hereby command you, the said Keeper, to receive the said A. B. into your custody in the said House of Correction, and him there safely to keep

keep until the next General Quarter Sessions of the Peace [or for the space of one month, or for the space of seven days, as the case may be], to be holden for the said county of ——— And have you him then there, together with this precept. Given under my hand and seal, at ——— in the said county of ——— the ——— day of ——— in the ——— year of the reign of

IV.—Vagrant Pass from County to County.

To the Constable of ——— in the said County of ———, and also to all Constables and other Officers, whom it may concern, to receive and convey; and to the Churchwardens, Chapelwardens, or Overseers of the Poor of the parish of ——— in the County of ——— or either of them, to receive and obey.

WHEREAS A. B. was apprehended in the township of ——— aforesaid, in the county of ——— aforesaid, as a Rogue and Vagabond, and is duly convicted before me ——— one of His Majesty's Justices of the Peace, in and for the said county of ——— for that he the said A. B. did on the ——— day of this month wander and beg in the said township of ——— [or as the case may be] and upon examination of the said A. B. taken before me the Justice aforesaid upon oath (which examination is hereunto annexed) it doth appear that his last legal settlement is in the parish of ——— in the county of ——— These are therefore to require you, the said Constable, to convey the said A. B. to the town of ——— in the county of ——— that being the first town in the next precinct through which he ought to pass in the direct way to the said parish of ——— in the county of ——— to which he is to be sent, and to deliver him to the Constable, or other officer of such first town in such next precinct, together with this Pass, and the duplicate of the examination of the said A. B. taking his receipt for the same. And the said A. B. is to

be

be thence conveyed on in like manner to the parish of ——— in the county of ——— there to be delivered to some of the churchwardens or overseers of the poor of the same parish of ——— to be there provided for according to law. And you the said churchwardens, chapelwardens, and overseers of the poor, are hereby required to receive the said person, and provide for him as aforesaid. And I do hereby certify, that the said A. B. hath been actually publickly whipped [or confined in the House of Correction for the space of ———]. Given under my hand and seal the ——— day of ——— in the year of our Lord ———

The Magistrate must inquire what is the next parish, out of the county, in the road to his place of settlement. The Keeper of the House of Correction will always be able to inform him.

The Pass must be directed to the Constable of the parish in which the prison is; but it is not necessary to name him.

The Pass may be sent at any time before the expiration of the imprisonment; and it ought to be dated on the day after the imprisonment expires.

[In page 195, *ante*, line 2, the word *after* is erroneously printed for *of*.]

If the Vagrant is settled in the county in which the prison is, the Constable must convey him immediately to that parish; and the above Form will serve, by striking out a few words.

Two Passes must be made, and an examination, No. I. must be attached to each.

The Justice is not obliged to pass; then all he need make out is the Commitment, and one Examination,

nation, which are to be sent to the Clerk of the Peace; and this is all that need be done when he is committed till the next Sessions.

V.—Certificate of Allowance.

_____ { To the Constable of _____ in the said County.

WHEREAS by a Pass under the hand and seal of _____ Esq. one of his Majesty's Justices of the Peace for the county of _____ A. B. a Rogue and Vagabond, is ordered to be conveyed to the parish of _____ in the county of _____ as the place of his last legal settlement: I do hereby order you the said Constable of _____ to convey the said A. B. on foot (or, in a cart, or, by horse) to the township of _____ in the county of _____ in the way to the said parish of _____ in _____ days' time; for which you are to be allowed the sum of _____ and no more. Given under my hand the _____ day of _____.

Receipt to be indorsed on the said Certificate.

RECEIVED of the Constable of _____ the within-mentioned A. B. with his Examination and Pass; the _____ day of _____.

By me,

A. C.

Constable of _____.

In most cases this is unnecessary, because the Magistrates in most counties have made general regulations upon the subject, and have hired a man to convey all the Vagrants. He clearly ought to be a Constable, and his conduct ought to be strictly watched.

In this part of the management of the Vagrant Laws, I have no doubt but shameful abuses exist. In every case he ought to bring back the Receipt.

VI.—Order upon the Treasurer of the County.

To the Treasurer of the County of ———.

WHEREAS A. B. was lately convicted by me of being a Rogue and Vagabond, and was committed by me to the House of Correction at ——— or whipped, and was conveyed by C. D. Constable of ——— to the said prison [or as the case may be]; I therefore hereby order you to pay him the sum of ——— as his expenses for such conveyance; and also the further sum of ——— as the fees of my Clerk. Given under my hand and seal this ——— day of ——— in the year of our Lord 1819: E. C.

VII.—Order for the Reward of 10s.

——— { To the High Constable of

WHEREAS it duly appeareth unto me ——— one of his Majesty's Justices of the Peace for the said county, that A. B. a Rogue and Vagabond, was found wandering and begging, [or, as the case shall be] in the parish of ——— in the said county; which said A. B. was this day brought before me by ——— of ——— Constable, in order to be dealt withal according to law: I do hereby order you to pay unto the said ——— as a reward for apprehending and bringing before me the said Rogue and Vagabond, the sum of 10s. within one week after demand thereof made, upon his producing and delivering to you this Order, and giving unto you his Receipt for the same. Given under my hand and seal at ——— in the said county, the ——— day of ———

VIII.—Conviction of a Vagrant.

Hertfordshire } BE it remembered, that on the — day of
to wit. } — in the — year of the reign of our
Sovereign Lord George the Third, of the United Kingdom of
Great Britain and Ireland King, Defender of the Faith, and in the
year of our Lord one thousand eight hundred and — at —
in the said county of Hertford, — of the parish of —
in the said county, bringeth before me — one of the Justices of
our said Lord the King, assigned to keep the peace of our said Lord
the King in and for the said county, and also to hear and de-
termine divers felonies, trespasses, and other misdemeanours com-
mitted in the said county, the body of —; and giveth me
the said Justice to understand and be informed, that, on the
said — day of — in the year aforesaid, at —
aforesaid, in the said county, he the said — apprehended
the said — then and there found wandering and begging
in the public streets in the said parish, contrary to the form of
the statute in such case made and provided: And thereupon
the said — prayeth of me the said Justice, that the said
— may be dealt with according to law for h— said offence:
Whereupon the said — is asked by me the said Justice, if
— he can say any thing for h—self why — he the said —
should not be convicted of the offence above charged upon h— in
the Form aforesaid, who plead— that — he is not guilty thereof:
Whereupon I do now proceed to examine into the truth of the
said complaint so brought by the said — against the
said — And thereupon, on the day and year first
aforesaid, at — aforesaid, in the county aforesaid, the
said — being a credible witness, on his corporal oath upon
the Holy Evangelists of God, now administered to h— by
me the said Justice, in the presence and hearing of the
said — deposeth and saith, that, on the said — day
of — in the year aforesaid, at — aforesaid, in the
c c 2 county

county aforesaid, he the said ——— saw the said ——— wandering and begging in the public streets in the said parish, and the said ——— doth not produce before me any evidence to gainsay the same; therefore it manifestly appears to me the said Justice, that the said ——— is guilty of the offence above charged upon h— in manner and form as in and by the said complaint alleged; and is thereby a Rogue and Vagabond, within the true intent and meaning of the said statute. It is therefore adjudged by me the said Justice, that the said ——— be convicted of the said offence, and —he is hereby by me accordingly convicted of the said offence so charged upon h— in and by the said complaint, according to the form of the statute in that case made and provided; and I do order the said ——— to be sent, and the said ——— is by me accordingly committed to the House of Correction, at Hertford, in and for the said county, for the space of seven days, according to the form of the statute in such case made and provided. In testimony whereof, I, the said Justice, to this record of conviction have put my hand and seal, at ——— aforesaid, in the county aforesaid, the said ——— day of ——— in the said ——— year of the reign of our Sovereign Lord King George the Third, and in the year of our Lord one thousand eight hundred and ———.

This need never be returned, unless the Vagrant, or some one for him, requires it, or where it is intended to prosecute him for a second or third offence, which may be done properly where a man runs away from his wife and family.

Scotchmen and Irishmen may be passed to Scotland and Ireland, when they have been punished as Vagrants.

IX.—Vagrant Pass to Scotland.

To the Constable of ——— in the said county of ——— and also to all Constables and other Officers whom it may concern, to receive and convey; and to all Constables and other Officers within that part of Great Britain called Scotland, whom it may concern, to receive and obey.

WHEREAS A. B. was apprehended in the town of ——— aforesaid, in the county of ——— aforesaid, as a Rogue and Vagabond, and is duly convicted before me ——— Esq. one of His Majesty's Justices of the Peace in and for the said county of ——— for that he the said A. B. did this day wander and beg in the said township of ——— [or as the case may be]; and upon examination of the said A. B. taken before me the Justice aforesaid upon oath, (which examination is hereunto annexed,) it doth appear that his lawful place of settlement is in that part of Great Britain called Scotland: These are therefore to require you the said Constable of ——— aforesaid, in the county of ——— aforesaid, to convey the said A. B. to the town of ——— in the county of ——— that being the first town in the next precinct through which he ought to pass, in the direct way to that part of Great Britain called Scotland aforesaid, to which he is to be sent, and to deliver him to the Constable or other officer of such first town in such next precinct, together with this Pass, and the duplicate of the Examination of the said A. B. taking his receipt for the same; and the said A. B. is to be thence conveyed on in like manner into the next adjoining shire, stewartry, or place in that part of Great Britain called Scotland aforesaid, and is there to be delivered to some Constable, or other officer of the next parish, district, or place within such next adjoining shire, stewartry, or place aforesaid, taking his receipt for the same; and such next officer

officer in that part of Great Britain called Scotland aforesaid is hereby required to receive the said A. B. and give such receipt as aforesaid, and to dispose of him the said A. B. according to law. And I do hereby certify, that the said A. B. hath been actually publicly whipped [or confined in the House of Correction for the space of ———]. Given under my hand and seal, this ——— day of ———, in the year of our Lord ———.

X.—Vagrant Pass to Ireland.

To the Constable of ——— in the said County ;
and also to all Constables, and other Officers
whom it may concern, to receive and convey ;
and to all other Officers of the Peace whom it
may concern, to receive and obey.

WHEREAS A. B. was apprehended in the town of ——— in the said county, as a Rogue and Vagabond, and is duly convicted before me ——— Esq. one of his Majesty's Justices of the Peace in and for the said county, for that he the said A. B. did this day wander and beg in the said township of ——— [or as the case may be] ; and upon examination of the said A. B. taken before me, the Justice aforesaid, upon oath, (which examination is hereunto annexed,) it doth appear, that the lawful settlement of him the said A. B. is in the kingdom of Ireland : These are therefore to require you, the said Constable of ——— to convey the said A. B. to the town of ——— in the county of ——— that being the first town in the next precinct through which he ought to pass, in the direct way to the said kingdom of Ireland, to which he is to be sent, and to deliver him to the Constable or other officer of such first town in such next precinct, together with this Pass, and the duplicate of the Examination of the said A. B. taking his receipt for the same. And the said A. B. is to be thence conveyed on in like manner, until he shall arrive

arrive in the county of —; and the Constable or other officer to whom he shall be delivered in the said county of — is hereby required to apply to some Justice of the Peace in and for the said county of — for a warrant to the master of any ship or vessel bound for the said kingdom of Ireland, that shall lie in the said county of — to take on board the said ship or vessel him the said A. B. and convey him to such place in the said kingdom of Ireland as such ship or vessel shall be bound unto. And I do hereby certify, that the said A. B. hath been actually publickly whipped [or confined in the House of Correction for the space of —]. Given under my hand and seal the — day of — in the year of our Lord —.

By the 59 Geo. III. all Scotchmen and Irishmen, who are chargeable to their parishes, may be conveyed to Scotland and Ireland by a Vagrant Pass.

The above Forms will answer for that purpose, with a little alteration at the beginning and the end.

The beginning of the Pass may be thus :

Hertfordshire.	{	To the Constable of — [the Parish to which he is chargeable], and also to all the Constables, and other Officers, &c. [as in the preceding forms.]
----------------	---	--

WHEREAS A. B. has been brought before me, E. C. Esq. one of his Majesty's Justices of the Peace in and for the said county of —, and it has been duly proved before me, by E. F. Overseer of the parish of —, that the said A. B. is chargeable to the said parish; and upon examination of the said A. B. taken before me, &c.

Then

Then go on as in the other Passes, and leave out "*I do hereby certify,*" and that sentence; and conclude with "*Given under my hand and seal,*" &c. The whole will be sufficient either for Scotland or Ireland.

An Examination, No. I. ought to be annexed to the Pass; and another Examination ought to be sent to the Clerk of the Peace.

THE END.

Lately was Published,

BY THE SAME AUTHOR,

(Third Edition, Price 5s.)

A VINDICATION

OF THE

RIGHT OF THE UNIVERSITIES

OF THE UNITED KINGDOM

TO A COPY OF EVERY NEW PUBLICATION :

With all the Proceedings to the Present Time.

*** Some time ago, as I came through Cambridge, I was told there was a very abusive Review of this Work in the *British Review*; and that there would be a still more abusive one in the next *Quarterly Review*, written by Mr. —, the — —, who had been paid a large sum of money for the performance.

I naturally was led to examine these compositions; and I was astonished that these Gentlemen could have so misrepresented two facts stated in my publication, which no Reader could possibly misunderstand; and particularly the latter Gentleman, whose name is publicly given to the world. They aver, and also declare that I agree in it, that the Booksellers never sent any Books to Cambridge, or thought themselves bound so to do, till Mr. Christian began to interfere in the business: and that he was only induced to do so, from the want of a Library of his own. The first assertion is directly contrary to the truth, and contrary to what I have most clearly advanced: the second assertion is not very material, but is a very unworthy representation

tation of what I myself have stated. I shall therefore state it shortly again.

Many years I have read Lectures in the University of Cambridge. The University, by an act of the Senate, conferred upon me the title of Professor of the Laws of England; but, as such Lecturer, I never had any residence in the University. When I was a single man, I was sometimes accommodated with an absent friend's room, in College: upon all other occasions, I have had lodgings in the town; and after my Annual Course, consisting of twenty-four Lectures, was ended, I never remained there a single day, either to study, or to practise Law.

Knowing that there was every Law Book in the Library, and that all the Reports were regularly sent as they issued from the Press, of course I had no occasion to carry with me more than my own manuscript notes and papers. If I wished to read an extract from the decisions of Lord Hardwicke, Lord Mansfield, or Lord Thurlow, &c. I found every book in the Public Library containing it, which had been sent to the University under the Copyright Act. This continued so for fourteen years, or more; when, after that time, if I sent to the Librarian for any of the Reports published during that time, the answer sent back was, It was not in the Library. I received such an answer for six years, without knowing the real meaning of it. I supposed that some studious Gentleman had pre-engaged the book in his own chambers; but by an accident I discovered that no Books published within the last six years had been sent as heretofore to the Library; and that the Booksellers contended, that because they then did not, as they had before done, enter the Books in Stationers' Hall, they were not bound to send any to the University Library. This question, by the advice of friends, I was induced to sit down and investigate. I came to the conclusion, that the Universities were entitled to the Copy of every new Publication, though it was not entered

entered at Stationers' Hall. My opinion was printed, with the reasons and authorities for it. When I began the consideration of the subject, I was not apprised that it had engaged the attention of the Trustees of the British Museum, and that they had laid a case before the then Attorney and Solicitor General, viz. Sir Arthur Pigot, and Sir Samuel Romilly, who had given a different opinion from mine. At last, the University of Cambridge tried the question in the Court of King's Bench, upon the authority of my opinion; who unanimously, without hesitation, came to the same conclusion as I had done. Upon which it was everywhere publicly declared—I have heard frequently the exact words—that “Professor Christian was a great fool! Lord Ellenborough was a great fool! and that they and all the Judges of the Court of King's Bench, in this case, were fools alike! and that the folly of this law must be corrected by an application to the House of Commons.”—This is the origin and history, so far, of this important question. With respect to the foolishness of my law, I had some consolation that I was in such good company—*Malim meherculè cum Socrate et Platone errare.*

But I was certainly surprised that two authors—particularly the last, whose name is avowed—should be hired at great wages, after such a distance of time, to fix all this folly and ignorance upon myself alone.

This Gentleman says, “I love Authors as the amiable angler, Isaac Walton, loved a frog, when he made it a bait for a pike.” There may be much wit in this; but I cannot possibly guess at the aptness of the application; as I certainly have loved my neighbour authors as I have loved myself: for I, and I alone, with the assistance of Parliament, procured for them the immense extension of Copyright; viz. that the family or assignee of an author should have, in all cases, the exclusive right of publishing for twenty-eight years; and if the author was then living, for the remainder of his life.

These

These Gentlemen having attacked my style, language, sense, and every thing required to write a book, or a sentence in it, even presume to treat my law with ridicule and contempt: —that is too much for me to bear; for I cannot condescend to fight these pygmy Lawyers upon my own ground. For I can assure them, that the highest Lawyer at the Bar, or in either House of Parliament, will not venture, upon this occasion, to dispute what they have had the audacity and temerity to do. The language of reproach is always particularly painful to me, however justly applied: and I shall say no more than this, that these Gentlemen of genius, notwithstanding the largeness of the fee they received, and the cleverness with which they have executed their office, will be sorry for what they have written as long as they live.

By the same Author :

PRINTED FOR CLARKE AND SONS, PORTUGAL STREET,
LINCOLN'S-INN FIELDS.

A TREATISE on the GAME LAWS. Price 10s. 6d.

The ORIGIN, PROGRESS, and PRESENT PRACTICE of the BANKRUPT LAW. Second Edition, much enlarged. 2 Vols. Price 1l. 18s.

INSTRUCTIONS for SUING OUT a COMMISSION of BANKRUPT; with the best Modern Precedents. Second Edition.

THE UNIVERSITY OF CHICAGO
LIBRARY
540 EAST 57TH STREET
CHICAGO, ILL. 60637
TEL. 733-4131

THE UNIVERSITY OF CHICAGO
LIBRARY
540 EAST 57TH STREET
CHICAGO, ILL. 60637
TEL. 733-4131

THE UNIVERSITY OF CHICAGO
LIBRARY
540 EAST 57TH STREET
CHICAGO, ILL. 60637
TEL. 733-4131

THE UNIVERSITY OF CHICAGO
LIBRARY
540 EAST 57TH STREET
CHICAGO, ILL. 60637
TEL. 733-4131



SCHOOL OF LAW LIBRARY
UNIVERSITY OF CALIFORNIA
LOS ANGELES

TR

UC SOUTHERN REGIONAL LIBRARY FACILITY



A 000 667 234 9

